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**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

WHITEWATER DRAW NATURAL,
RESOURCE CONSERVATION
DISTRICT, HEREFORD NATURAL
RESOURCE CONSERVATION
DISTRICT, ARIZONA ASSOCIATION
OF CONSERVATION DISTRICTS,
CALIFORNIANS FOR POPULATION
STABILIZATION, SCIENTISTS AND
ENVIRONMENTALISTS FOR
POPULATION STABILIZATION, NEW
MEXICO CATTLEGROWERS'
ASSOCIATION, GLEN COLTON,
FLORIDIANS FOR A SUSTAINABLE
POPULATION, RALPH POPE

Case No. 3:16-cv-2583

**AMENDED COMPLAINT FOR
DECLATORY AND INJUNCTIVE
RELIEF**

1
2 Plaintiffs,

3 v.

4 KIRSTJEN NIELSEN, IN HER
5 OFFICIAL CAPACITY AS
6 SECRETARY OF HOMELAND
7 SECURITY, and THE DEPARTMENT
8 OF HOMELAND SECURITY

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10 Defendants.

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13 **PRELIMINARY STATEMENT**

14 1. This case addresses a set of eight related programs and actions administered
15 by the Department of Homeland Security (“DHS”) and DHS Secretary Elaine
16 Duke (together, DHS and the DHS Secretary are referred to as “DHS”). The eight
17 programs, which are authorized by statute or executive directive, include: 1)
18 employment based immigration; 2) family based immigration; 3) long term
19 nonimmigrant visas; 4) parole; 5) Temporary Protective Status (“TPS”); 6)
20 refugees; 7) asylum; and 8) Deferred Action for Childhood Arrivals (“DACA”).
21 These programs, which result in similar environmental impacts, regulate the entry
22 into and settlement of millions of foreign nationals in the United States. To a
23 substantial degree, most of the population growth in the United States in recent
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1 decades has been caused and continues to be caused by these federal programs.

2 Human population growth causes impacts to the environment. Like its predecessor
3 agency, the Immigration and Naturalization Service (“INS”), DHS has turned a
4 blind eye to the environmental impacts, including cumulative impacts, resulting
5 from its programs that regulate foreign nationals who enter into and settle in the
6 United States.
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9 2. DHS’s blind spot regarding the environmental impacts resulting from its
10 programs that regulate the entry into and settlement of foreign nationals in the
11 United States is epitomized by its failure to comply with the National
12 Environmental Policy Act, 42 U.S.C. § 4331 *et seq.* (2012) (“NEPA”) in the course
13 of its administration of these programs.
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16 3. The core purpose of NEPA is to ensure that, before a federal agency
17 undertakes a federal action, its decision-makers consider the range of potential
18 environmental impacts the action may have on the “human environment.” *See* 42
19 U.S.C. § 4332(2)(C) (2012). NEPA embodies a national policy that aims to ensure
20 that decisions affecting the human environment are made with eyes wide open and
21 in full view of the public, so that all stakeholders may understand the implications
22 of federal actions on the natural resources that we all depend on. NEPA “help[s]
23 public officials make decisions that are based on understanding of environmental
24 consequences, and take actions that protect, restore, and enhance the environment.”
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1 40 C.F.R. § 1500.1 (2017) (Council on Environmental Quality (“CEQ”)
2 regulations). With respect to its programs that regulate the entry into and
3 settlement of foreign nationals in the United States, DHS is woefully deficient in
4 carrying forth this Congressional obligation.
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6 4. NEPA was enacted in 1970. At that time, INS administered the federal
7 programs authorized by statute regulating the entry into and settlement of foreign
8 nationals in the United States. Despite the adoption of NEPA, INS never undertook
9 any NEPA compliance with respect to these programs. Thirty-three years later,
10 DHS was established. The primary authority to implement and administer the
11 programs regulating the entry into and settlement of foreign nationals in the United
12 States was transferred to DHS. As a new federal agency, DHS adopted its own
13 NEPA procedures, which were finalized in 2014 as DHS Directive 02301,
14 Implementation of the National Environmental Policy Act, attached hereto as Ex. 1
15 and Instruction Manual 023-01-001-01 (“Instruction Manual”), attached hereto as
16 Ex. 2.
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22 5. DHS’s adoption of new NEPA procedures presented an opportunity to
23 correct INS’s decades-long failure to recognize environmental impacts resulting
24 from its population-growth inducing programs, a particularly important task in
25 light of the ever-increasing numbers of foreigners settling in the United States and
26 their obvious environmental impacts. However, the Instruction Manual continued
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1 to perpetuate the INS blind spot regarding the myriad environmental consequences
2 of its actions concerning the entry into and settlement of mass numbers of people
3 in the United States. In the Instruction Manual, DHS arbitrarily and capriciously
4 fails even to recognize that one of its core missions is the regulation of the entry
5 into and settlement of foreign nationals in the United States. The Instruction
6 Manual accordingly fails to provide any analysis as to whether the programs that
7 implement that mission might therefore have an effect on the environment. DHS
8 continues to fail to undertake any NEPA review, in direct contravention of its
9 statutory obligation, regarding these ongoing programs.
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13 6. In order to establish the scope and magnitude of the environmental impacts
14 at issue, Plaintiffs have undertaken extensive research and retained experts to:
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16 a) identify and delineate those specific, ongoing DHS programs regulating the
17 entry into and settlement in the United States of multitudinous foreign nationals;
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19 and b) identify and delineate environmental impacts to Plaintiffs resulting from
20 these programs, including, but not limited to, the impacts from massive population
21 growth and environmental damage along the Southwest border of the United
22 States.¹
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26 ¹ Plaintiffs retained three experts for this action. Jessica Vaughan, an expert on
27 United States immigration law, policy and practice, has analyzed DHS' programs
28 and their impacts on the United States population as a whole, on the populations of

1 7. Plaintiffs seek to compel DHS to properly comply with NEPA in connection
2 with its programs that regulate the entry into and settlement of myriad foreign
3 nationals in the United States. Plaintiffs seek both a declaration from this Court
4 that DHS is violating NEPA and an injunction to require DHS to comply with the
5 law. Further, Plaintiffs assert that, in the course of approving its agency actions
6 implementing its programs regulating the entry into and settlement of foreign
7 nationals in the United States, DHS violated its fundamental obligation to engage
8 in well-reasoned, non-arbitrary decision making under the Administrative
9 Procedure Act, (“APA”). *See* 5 U.S.C. § 701 *et seq.* (2012). In Count I, Plaintiffs
10 assert that the NEPA procedures DHS adopted in 2014 are arbitrary and capricious,
11 in violation of the APA and NEPA. In Count II, Plaintiffs assert that DHS’s failure
12 to initiate NEPA compliance for eight programs specified in ¶ 55 regulating the
13 entry into and settlement of foreign nationals in the United States violates the APA
14 and NEPA. In Count III, Plaintiffs assert the Categorical Exclusion A3 adopted by
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22 the areas in which Plaintiffs reside, and the impacts of some of the programs on the
23 land near the Southwest border. Her affidavit regarding these programs is attached
24 hereto in Ex. 3. Steven Camarota, Ph.D., an expert on the demographic impacts of
25 immigration, produced an expert report addressing the impact of immigration upon
26 population growth. His report is attached hereto as Ex. 4. Phil Cafaro, Ph.D., a
27 sustainability expert, produced a report on the environmental impacts of population
28 growth. His report is attached hereto as Ex. 5.

1 DHS on November 6, 2014, is arbitrary and capricious on its face. Count IV
2 addresses the four times that DHS promulgated rules that DHS deemed
3 categorically excluded from NEPA review. Plaintiffs assert the application of the
4 Categorical Exclusion A3 on these four separate occasions was arbitrary and
5 capricious as applied, in violation of the APA and NEPA. Finally, in Count V,
6 Plaintiffs challenge the NEPA review DHS completed for its June 2, 2014, Action
7 “Response to the Influx of Unaccompanied Alien Children” as violating NEPA and
8 the APA.
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12 **JURISDICTION AND VENUE**

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14 8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
15 (2012) (federal question jurisdiction), 5 U.S.C. § 701 *et seq.* (2012) (APA), 28
16 U.S.C. § 1361 (2012) (mandamus) and may issue a declaratory judgment and
17 further relief pursuant to 28 U.S.C. § 2202 (2012) (declaratory and injunctive
18 relief). Plaintiffs claim that DHS has not and is not acting in accordance with
19 federal law. *See* 5 U.S.C. § 706 (2012).
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22 9. Venue in this judicial district is proper under 28 U.S.C. § 1391(e) (2012)
23 because this is an action against an agency of the United States and at least one
24 plaintiff resides in this district.
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RELEVANT STATUTES

A. THE NATIONAL ENVIRONMENTAL POLICY ACT

10. NEPA is the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a) (2017). NEPA’s essential purpose is “to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(c).

11. NEPA expressly recognizes Congressional concern for “the profound influences of population growth” on “the natural environment[.]” 42 U.S.C. § 4331(a). Through NEPA, Congress directs, in relevant part, that the Federal Government shall:

use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;
- (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible an

environment which supports diversity and variety of individual choice;

(5) *achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities*

42 U.S.C. § 4331(b) (emphasis added).

12. To accomplish its goals, NEPA requires each federal agency to identify and consider the environmental impacts of its proposed federal actions. *See generally* 42 U.S.C. § 4331. Each agency must also consider alternatives and mitigating measures which could avoid or reduce such impacts before implementing federal agency actions that may significantly affect the environment. To these ends, NEPA establishes, in relevant part:

The Congress authorizes and directs that, to the fullest extent possible:

(1) the policies, regulations, and public laws shall be interpreted and administered in accordance with the policies set forth in this Act, and

(2) all agencies of the Federal Government shall

. . .

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on

(i) the environmental impacts of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action, . . .

(v) any irreversible or irretrievable commitment of resources which would be involved in the proposed action should it be implemented.

42 U.S.C. § 4332.

13. “The phrase ‘to the fullest extent possible’ in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency’s operation expressly prohibits or makes compliance impossible.” 40 C.F.R. § 1500.6 (2017). *See also* 40 C.F.R. § 1507.2 (2017) (Agency capability to comply).

14. NEPA is designed to inject environmental considerations early into a federal agency’s decision making process in order that the agency can “take actions that protect, restore, and enhance the environment.” 40 C.F.R. § 1500.1(c). NEPA is also intended to engage the public and stakeholders while the agency gathers and solicits relevant, “high quality” information, as well as inform and engage the public in the agency decision making process. *See* 40 C.F.R. § 1500.1(b). *See also* §§ 1503.1(a)(4) (Inviting comments), 1506.6 (Public involvement) (2017).

Because “public involvement” is paramount in the NEPA process, each agency shall “[p]rovide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.” 40 C.F.R. § 1506.6(b). NEPA thus is, at the very least, an environmental disclosure and public participation tool.

15. NEPA established the White House Council on Environmental Quality (“CEQ”), which issues regulations guiding agencies’ compliance with NEPA. *See* 42 U.S.C. § 4341 *et seq.* (2012); 40 C.F.R. § 1500 (2017). CEQ regulations clearly

1 define what constitutes agency action and set forth the process for determining
2 whether an action or program significantly affects the quality of the human
3 environment. “Major federal actions” are defined to “include new and continuing
4 activities including projects and programs entirely or partly financed, assisted,
5 conducted, regulated, or approved by federal agencies; [and] new or revised
6 agency rules, regulations, plans, policies, or procedures” 40 C.F.R. §
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8 1508.18(a) (2017).
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10 16. CEQ regulations provide that each federal agency shall adopt procedures to
11 ensure that its “decisions are made in accordance with [NEPA’s] policies and
12 procedures” 40 C.F.R. § 1505.1. Further, agency procedures shall comply
13 with CEQ regulations. *See* 40 C.F.R. § 1507.3(b)(1) (2017). An agency must
14 specifically ensure that its NEPA procedures provide for designating the major
15 decision points for the agency’s principal programs likely to have a significant
16 effect on the human environment and assuring that the NEPA process corresponds
17 with them. 40 C.F.R. § 1505.1(b) (2017).
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22 17. CEQ regulations recognize that human population growth is an effect
23 subject to NEPA analysis. 40 C.F.R. § 1508.8(b) (2017) provides, in relevant part:
24 “Indirect effect may include growth inducing effects and other effects related to
25 induced changes in the pattern of land use, population density or growth rate, and
26 related effects on air and water and other natural systems, including ecosystems.”
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18. Pursuant to NEPA, DHS adopted its Instruction Manual on November 6, 2014. *See* Ex. 2. The Instruction Manual “serves as the DHS implementing procedures for NEPA (as required by 40 C.F.R. §§ 1505.1 and 1507.3) which supplement the CEQ regulations and therefore must be read in conjunction with them.” *Id.* at III-1. The Instruction Manual states that NEPA applies to a wide range of DHS activities:

Generally, NEPA applies to Federal actions that affect the human environment. Within DHS, NEPA generally applies to actions to be undertaken, funded, permitted or otherwise approved by DHS[,] including activities that may be wholly initiated within DHS, executed by DHS under the direction of Congress, or proposed by persons or organizations outside of DHS that require approval funding, a license, or a permit from DHS.

Id.

19. Pursuant to 42 U.S.C. § 4332(C), each agency is required to prepare an “Environmental Impact Statement” (“EIS”) for each “major federal action[] significantly affecting the quality of the human environment”

20. CEQ regulations provide for the preparation of a document known as an Environmental Assessment (“EA”) to enable an agency to determine whether a particular action may have a significant impact on the quality of the human environment and thus require preparation of an EIS. 40 C.F.R. § 1501.4 (2017).

21. An EA or EIS must also discuss and analyze alternatives to a proposed program or project—including a “no-action” alternative, which may have less

environmental impact than the proposed action, as well as mitigation measures in relation to potential environmental impacts. *See* 40 C.F.R. §§ 1502.14, 1502.16, 1508.9 (2017).

22. CEQ regulations provide that agency actions that are “related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a) (2017). An EIS may be, and sometimes must be, prepared for broad federal actions such as the adoption of new agency programs or regulations. 40 C.F.R. § 1508.18. Agencies shall prepare statements on broad actions, including related actions, in order to include environmental considerations in policy, and shall time such statements to coincide with meaningful points in agency planning and decision making. 40 C.F.R. § 1502.4(b). Related actions “have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.” 40 C.F.R. § 1502.4(c)(2).

23. In preparing an EA or EIS, an agency must consider direct, indirect, and cumulative effects. *See* 40 C.F.R. §§ 1502.16, 1508.8, 1508.9, 1508.27 (2017).

Under NEPA, “effects” and “impacts” are synonymous and include:

ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects .

...

1 40 C.F.R. § 1508.8(b).

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3 24. CEQ regulations authorize agencies to exempt certain agency actions from
4 environmental review through the use of “categorical exclusions.” 40 C.F.R. §
5 1508.4 (2017) provides:

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8 “Categorical Exclusion” means a category of actions which do not
9 individually or cumulatively have a significant effect on the human
10 environment and which have been found to have no such effect in
11 procedures adopted by a Federal agency in implementation of these
12 regulations. ([40 C.F.R.] § 1507.3) and for which therefore, neither
13 an environmental assessment nor an environmental impact statement
14 is required Any procedures under this section shall provide for
15 extraordinary circumstances in which a normally excluded action
16 may have a significant effect.

17 25. For those federal actions that are not categorically excluded and are,
18 following completion of an EA, determined not to have “a significant impact on
19 the human environment” and thus do not require preparation of an EIS, the agency
20 issues a “finding of no significant impact” (“FONSI”). 40 C.F.R. § 1508.13
21 (2017).

22 **B. THE ADMINISTRATIVE PROCEDURE ACT**

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24 26. The APA provides for judicial review of federal agency actions. *See* 5
25 U.S.C. § 701 *et seq.* Under the APA, a reviewing court must “hold unlawful and
26 set aside agency action, findings, and conclusions” found to be “arbitrary,
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capricious, an abuse of discretion, or otherwise not in accordance with law[.]” 5 U.S.C. § 706(2)(A) (2012). Accordingly, a federal agency must take a hard look at the consequences of its actions. It must examine the relevant data and articulate a satisfactory explanation for its action, including “a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of the U.S. Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). An agency must explain in an explicit and rational manner how its decision is based upon and complies with the relevant factors specified in the controlling statutory provision(s), together with applicable agency regulations. *See id.* at 42-43. A reviewing court may set aside, as arbitrary and capricious, agency factual findings and conclusions found to be unsupported by substantial record evidence. 5 U.S.C. § 706(2).

PARTIES

A. PLAINTIFFS

27. The Whitewater Draw Natural Resource Conservation District (“WWDNRCD”) and the Hereford Natural Resource Conservation District (“HNRCD”) are a part of the state of Arizona’s Natural Resource Conservation District program that was established in response to the dust bowl of the 1930s. *Natural Resources Conservation Districts*, Ariz. State Land Dep’t., <https://land.az.gov/natural-resources/natural-resource-conservation-districts> (last visited Dec. 8, 2017). The conservation district program promotes the restoration

1 and conservation of the state's natural resources. *Id.* As part of the conservation
 2 district program, WWDNRCD and HRNCD operate pursuant to Arizona Revised
 3 Statutes ("A.R.S.") Title 37, Chapter 6, and are governed by locally elected and
 4 appointed officials. *Id.* The districts are charged with evaluating the conservation
 5 needs of their respective areas and partnering with local, state, and federal agencies
 6 to restore and conserve the landscapes and waters of their respective regions. *Id.*

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 9 The statutory purpose of the WWDNRCD and HNRCD is defined as follows:

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 11 to provide for the restoration and conservation of lands and soil
 12 resources of the state, the preservation of water rights and the control
 13 and prevention of soil erosion, and thereby to conserve natural
 14 resources, conserve wildlife, protect the tax base, protect public lands
 15 and protect and restore this state's rivers and streams and associated
 16 riparian habitats, including fish and wildlife resources that are
 dependent on those habitats, and in such manner to protect and
 promote the public health, safety and general welfare of the people.

17 Ariz. Rev. Stat. Ann. § 37-1001 (2017); *see also Natural Resources Conservation*
 18 *Districts*, Ariz. State Land Dep't, [https://land.az.gov/natural-resources/natural-](https://land.az.gov/natural-resources/natural-resource-conservation-districts)
 19 [resource-conservation-districts](https://land.az.gov/natural-resources/natural-resource-conservation-districts) (last visited Dec. 8, 2017).

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 21 28. The Arizona Association of Conservation Districts ("AACD") is a 501(c)(3)
 22 nonprofit organization established in 1944 by Arizona's conservation districts. *See*
 23 *Ariz. Ass'n of Conservation Dists.*, <http://www.aacd1944.com/> (last visited Dec. 8,
 24 2017). The mission of the AACD is to support the Conservation Districts in
 25 providing conservation leadership and education, and in addressing local
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1 conservation priorities in partnership with landowners, federal and state agencies,
2 tribal & local governments and other partners. *See id.*

3 29. The members of the WWDNRCD, HNRCD, and AACD have been
4 victimized and damaged by DHS's failure to comply with NEPA because their
5 members live along the Southwest border, which has been environmentally
6 degraded as a result of DHS's discretionary actions relating to border enforcement
7 and immigration law. The policies of DHS have resulted in an increase in the
8 numbers of individuals illegally crossing their members' properties. *See* Ex. 3 at
9 Ex. D: How Certain DHS Programs Affect Land on the Southwest Border.
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11 30. Fred Davis is the Chairman of WWDNRCD, located in Southeastern
12 Arizona. F. Davis Aff., attached hereto as Ex. 6 at ¶ 1. He is also a member of
13 AACD. *Id.* He notes that "[t]he WWDNRCD seeks to protect, conserve and sustain
14 natural resources in th[e] region, particularly soil and water." *Id.* at ¶ 2. Most of
15 WWDNRCD's members are, like Mr. Davis, "multi-generation ranchers and
16 farmers who are stewards of their land that plan to pass their traditional way of life
17 on to future generations." *Id.* Mr. Davis lives on a 10,000-acre ranch 25 miles from
18 the US/Mexico border that has been in his family for generations. *Id.* at ¶ 1. For
19 Mr. Davis, "the ranch was a quiet and peaceful place to live and raise a family"
20 before illegal border-crossings by illegal aliens and smugglers started becoming
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1 rampant across his property. *Id.* at ¶ 5. The unending parade of illegal aliens has
2 “physically degraded” his land. *Id.* at ¶ 11.

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4 The constant trampling of the land by illegal border crossers has left
5 permanent damage as well. Many illegal aliens crossing over our
6 native grasslands will follow the paths beaten over time by previous
7 crossers, and in those places, the grass will no longer grow. There are
8 now eleven paths near our house where sixty percent of the grass is
9 gone. These grasses are native to the area, and illegal border crossers
10 also have an adverse impact on protected plant life. Native plants that
11 grow on our property, such as the Soaptree Yucca cactus, which can
12 grow to be 12 feet high, Century Plant, barrel cactus, and the
13 Mesquite tree that have been trampled by drug cartels crossing in
14 vehicles. What makes me even angrier is that many of these plants are
15 protected by the state of Arizona—we ourselves would be violating
16 the law if we removed these native plants from our property. Yet these
17 plants that take 6 to 8 years to grow are destroyed without
18 consequence by illegal aliens.

19 *Id.* at ¶ 13.

20 Mr. Davis and his family have “picked up literally tons of trash” that illegal
21 border-crossers have dumped on their land. *Id.* at ¶ 11. They have found human
22 feces on their property “in abundance.” *Id.* The garbage is a dangerous health
23 hazard. *Id.* It has killed some of their cattle, and it has made ranching “far more
24 difficult, dangerous and expensive.” *Id.* at ¶¶ 11, 12. The years of illegal border-
25 crossings have shattered Mr. Davis’s peace and tranquility. *Id.* at ¶ 14. Life on the
26 ranch has become much more stressful; Mr. Davis feels like he is living in a “war
27 zone.” *Id.* at ¶ 15.

1 We feel that we are in constant reactionary mode, as people keep
2 unlawfully crossing, and we know some of them may be a threat to
3 our personal safety, giving us great anxiety for our children. The
4 dogs bark in the night at the border crossers, making it difficult for
5 us to sleep.

6 *Id.* at ¶ 14.

7 31. The constant stress means that Mr. Davis has had “headaches and health
8 problems [] at home, that go away when I travel.” *Id.* at ¶ 15. The DHS actions at
9 issue in this case “have real, concrete, harmful ongoing impacts on me, my family,
10 our land, and the general border environment.” *Id.* at ¶ 20. Like so many others,
11 Mr. Davis is “angry contemplating all of the damage done to our environment that
12 might never have occurred if DHS had followed its obligations under NEPA.” *Id.*
13 at ¶ 20.

14 32. Peggy Davis has served as a clerk and as the Education Center Director of
15 the WWDNRCD. P. Davis Aff., attached hereto as Ex. 7 at ¶ 2. She is also a
16 member of the AACD. *Id.* Mrs. Davis lives with her husband Fred Davis, together
17 with her children and grandchildren, on a 10,000-acre ranch 25 miles from the
18 Arizona/Mexico border. *Id.* at ¶ 1. In her role as clerk and Education Director, Mrs.
19 Davis has planned workshops on such topics as water and soil, solar energy, estate
20 planning, and ranch tours. *Id.* at ¶ 2. Because of the unending flow of illegal
21 border-crossers over her land, she can no longer take walks or bike rides alone. *Id.*
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at ¶ 4. She is “afraid to go alone without a firearm.” *Id.* Mrs. Davis’s enjoyment of her ranch has diminished significantly over the years because DHS, and INS before it, adopted policies that have failed to secure the border. *Id.* Accordingly, “it feels like our land has been under siege.” *Id.* at ¶ 1. She and her family are constantly picking up trash of all sorts, as well as continuously repairing fences, as documented in the photographs that are included in her affidavit. *Id.* She too has suffered injuries because DHS has failed to conduct any NEPA analysis regarding its myriad immigration-related actions, stating:

Perhaps, if DHS had done the proper analysis and informed the public when it made discretionary decisions that encouraged illegal aliens to continue crossing the border, as the law requires, it would have decided that it was important to ramp up enforcement instead. Perhaps the public, if it had understood the environmental costs of DHS’s actions, would have demanded more effective enforcement. My land and the whole border region in the Southwest might look different today—unspoiled, serene, and undamaged environmentally. Instead, ceaseless flows of people have crossed the border, with no end in sight, . . . because, our government has simply given up.

Id. at ¶ 9.

33. Californians for Population Stabilization (“CAPS”) is a 501(c)(3), non-partisan, membership-based, public interest organization organized and existing under the laws of California. *See About Us*, Californians for Population Stabilization, <http://www.capsweb.org/about/about-us> (last visited Dec. 2, 2017). CAPS’s mission is to end policies and practices that cause human overpopulation

1 and the resultant decline in Americans' quality of life in California and the rest of
2 the United States. *Id.* CAPS believes that unending human population growth
3 causes environmental damage and overuse of nature's bounty, leaving an
4 impoverished Golden State. *See id.* Unending population growth in California also
5 strains local infrastructure. *Id.* Further, it frays community institutions.

6 Environmental impacts resulting from unending population growth include, but are
7 not limited to: damage to air quality, increasing sprawl, increasing demand for
8 water, increasing water pollution, increasing greenhouse gases and accelerating
9 climate change, exacerbated traffic congestion, school overcrowding, loss of green
10 space, farmland, forests and wildlife, and other non-renewable resources. *See*
11 *generally id.* CAPS has members and supporters in every state of the United
12 States, with a majority residing throughout California. Because essentially all of
13 California's population growth presently stems from immigration and births to
14 immigrants, CAPS's priority goal is to reduce both legal and illegal immigration
15 into California and the United States. *Id.* Indeed, California's population nearly
16 doubled between 1970 and 2015, going from approximately 20 million to 39.6
17 million.² Most of that population growth resulted from immigrants and their
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26 ² Steven A. Camarota & Bryan Griffith, *By State: Number Immigrants and Their*
27 *Minor Children*, Ctr. for Immigration Studies (March 28, 2016),
28 <http://cis.org/Camarota/Map-Number-Immigrants-Minor-Children>.

1 offspring. *Id.* California has the largest share of foreign born of any state in this
2 nation. *Id.* In 1970, immigrants and their minor children constituted roughly 13%
3 of California's population—2.6 million people. *Id.* By 2015, 37.4% of California's
4 population was comprised of immigrants and their minor children—nearly 15
5 million people. *Id.* There is no end in sight to the state's immigration-driven
6 population growth. CAPS and its members who live, work and pursue recreational
7 activities in California are adversely affected by the population growth resulting
8 from the DHS actions at issue. CAPS members have a substantial interest in
9 ensuring that DHS complies with federal law, including the requirements of
10 NEPA. CAPS and its members are being, and will continue to be, harmed by the
11 failure of DHS to make any attempt to comply with NEPA. Plaintiff's expert
12 Jessica Vaughan estimates 21% of permanent residents admitted by DHS
13 programs at issue between 2003 and 2015 settled in California. *See* Ex. 3 at Ex. B:
14 Tables and Graphs of Population Increase Caused By DHS Programs, at 132.

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21 34. Richard D. Lamm, an attorney and Certified Public Accountant, served as
22 Governor of Colorado from 1975 to 1987, and is a longtime member of CAPS. R.
23 Lamm Aff., attached hereto as Ex. 8 at ¶ 2. Governor Lamm has been a resident of
24 Colorado since 1961. *Id.* at ¶ 1. He is presently Co-Director of Public Policy at the
25 University of Denver. *Id.* at ¶ 2. Governor Lamm has "been deeply involved in the
26 environmental movement for decades and ha[s] always been concerned about out
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1 of control population growth.” *Id.* at ¶ 3. While attending law school at Berkeley
2 during the years 1958-1961, he “was already appalled at what population growth
3 was doing to California.” *Id.* at ¶ 5. He notes that California’s population has
4 continued to swell, now largely because of immigration. *Id.* That is why he joined
5 CAPS. *Id.* In the more than 50 years since Governor Lamm moved to Colorado he
6 has “embraced and cherished its wilderness.” *Id.* at ¶ 8. He notes that he has
7 climbed 50 of Colorado’s highest peaks, hiked and skied its mountains, and
8 kayaked its rivers. *Id.* “That unspoiled, beautiful Colorado that stirred me so deeply
9 has fallen victim to population growth, which is inseparable from mass foreign
10 immigration.” *Id.* Unhappily, he has “watched Colorado go from a lovely state
11 with a high quality of life to a Colorado whose front range (from Pueblo to Fort
12 Collins) is rapidly becoming a Los Angeles of the Rockies.” *Id.* Substantial
13 numbers of immigrants have settled in Colorado and the state’s population has
14 more than doubled between 1970 and 2015—from 2.2 million people to about 5.5
15 million people.³ Many of the newcomers are Americans who have been “crowded
16 out of California by endless foreign immigration.” Ex. 8 at ¶ 14. He believes that
17 his lifelong effort “to save Denver from an environmentally unsustainable, high
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26 ³ See *Resident population in Colorado from 1960 to 2016, in millions*, Statista,
27 <https://www.statista.com/statistics/206101/resident-population-in-colorado/> (last
28 visited Dec. 7, 2017).

1 growth future would not have been in vain” if DHS had complied with NEPA “as
 2 it was supposed to.” *Id.* at ¶ 17.

3 The National Environmental Policy Act (NEPA), which became law
 4 in 1970, was supposed to have stopped this kind of ill-considered
 5 population growth from happening. In the 1960s and 1970s, the
 6 environmental movement understood how important population
 7 stabilization was to everything it stood for. This emphasis in NEPA
 8 itself of the importance of population growth reflects this priority.
 9 NEPA, the bedrock of our environmental law, was designed to ensure
 10 for environmentally informed decision making and public
 11 participation Federal agencies, like the Department of Homeland
 12 Security (DHS), are not supposed to carry out actions that affect the
 13 environment without first considering the consequences. What can
 14 have a greater environmental impact on our states and the nation than
 15 immigration? In the days when NEPA was passed, population growth
 16 was not substantially a matter of immigration, but now immigration is
 17 our population’s primary driver. Moreover, it is certainly the primary
 18 driver of population growth that is most within the federal
 19 government’s control. Our immigration levels are ultimately a policy
 20 choice. DHS is the federal agency that actually implements our
 21 nation’s immigration policies, and so DHS is responsible for carrying
 22 out the federal policy that has the greatest impact on the environment
 23 of all. And yet, DHS has done zero environmental review of its
 24 immigration related actions. Zero!

25 *Id.* at ¶ 16.

26 35. Don Rosenberg is a 29-year resident of California. D. Rosenberg Aff. at ¶ 1,
 27 attached hereto as Ex. 9. He is also the father of Drew Rosenberg, a 25-year old
 28 law student who was hit and killed in 2010 by Roberto Gallo, a Honduran national
 who illegally entered the United States and subsequently received a long term

1 lawful status under the TPS program, one of the programs at issue in this case. *Id.*

2 at ¶ 8. Mr. Rosenberg joined CAPS after his son was killed because:

3 mass immigration was imposing huge social and environmental costs.
4 Mass immigration wasn't adding to our quality of life--it was
5 detracting from it in a tremendous way. Furthermore, our government
6 is even fostering and overlooking illegal activity, because our
7 "leaders" were more interested in votes, campaign contributions and
8 the cheap labor

9 *Id.* at ¶ 13. Mr. Rosenberg dreads the ever-increasing congestion of Los Angeles

10 County's roads, and resents the ever-increasing air pollution coming from

11 "millions of cars sitting on the 101 freeway for hours." *Id.* at ¶ 5. Because of the

12 drought, exacerbated by endless population growth, he and his neighbors no longer

13 water their yards. *Id.* at ¶ 6. He finds that "[l]iving in a landscape without plants

14 drastically reduces the natural beauty and enjoyability of the surroundings." *Id.* Mr.

15 Rosenberg recognizes that Southern California has a limited water supply and

16 "when more people come in, we have no choice but to use less water personally."

17 *Id.* He states:

18
19 I fear that in the future, the environment will continue to deteriorate in
20 Southern California. Despite the fact that we seem to have reached our
21 land's capacity, and we are already straining to support the population
22 we have now, DHS seems to only want to force ever more population
23 growth on the nation. For Southern California's future, I see more
24 water shortages, more traffic, and more pollution. The state is already
25 in a hole, and it just seems like our public officials are looking for a
26 bigger shovel. It will probably drive me out of California in the future.
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1 *Id.* at ¶ 14. Finally, Mr. Rosenberg wistfully muses that perhaps, if DHS had
2 complied with NEPA, it might not have created such a huge TPS program, which
3 allowed his son’s killer to stay in the United States, and maybe his son would still
4 be alive. *Id.* at ¶ 16.

6 36. Claude Wiley joined CAPS because “something needs to be done about the
7 population explosion, the reckless disregard of immigration laws, and the
8 ecological impacts” resulting from both. C. Wiley Decl. at ¶ 2, attached hereto as
9 Ex. 10. He lives in Pasadena, California, and commutes to work by bicycle
10 (wearing a mask) because he is “dedicated to doing [his] part to reduce pollution
11 and carbon emissions.” *Id.* at ¶ 5. But large scale unending population growth in
12 the Los Angeles region, all of which now results from immigration, simply adds
13 ever more pollution and erases air quality gains. *Id.* at ¶ 5. Mr. Wiley is frustrated
14 because “if not for the immigration-driven population growth, the air quality in the
15 Los Angeles region would be getting better.” *Id.* at ¶ 10. He takes mass transit to
16 lessen his impact on the environment and observes that, due to strong state and
17 local policies to support mass transit, the buses and the trains are full and yet the
18 roads are still choked with cars: “we’re starting to hit a wall.” *Id.* at ¶ 13. The
19 lovely places where Mr. Wiley has enjoyed hiking and nature-watching over the
20 years, including the San Gabriel Mountains and Echo Mountain, grow ever more
21 crowded with people, and “[t]he more crowded the path becomes, the less I want to

1 use it.” *Id.* at ¶ 15. Like others, Mr. Wiley fears for California’s future if
2 population growth trends continue unabated. *Id.* at ¶ 18. He notes that “DHS
3 continues to drive population growth through its discretionary actions” *Id.* “If
4 DHS had only followed its legal obligations under NEPA, perhaps the public
5 would have realized the impact immigration was having on the environment and
6 made different decisions—Perhaps the Los Angeles area and California would
7 look very different today.” *Id.* at ¶ 17.

10 37. Ric Oberlink has lived in Berkeley California for nearly 40 years and is a
11 member of CAPS. R. Oberlink Aff., attached hereto as Ex. 11, at ¶ 1-2. As the
12 population of California, and particularly the Bay area, has continued to rise, his
13 enjoyment of local parks has diminished due to increased crowding. *Id.* at ¶ 4. He
14 notes that “[a]n increased human population has made camping in wilderness areas
15 and national parks much more troublesome and much less convenient than it was
16 in previous years when population levels were lower.” *Id.* at ¶ 5. “Camping spots
17 in prime areas at prime times require advance reservations, often far in advance.”
18 *Id.* at ¶ 5. Mr. Oberlink’s enjoyment of cycling has also diminished because areas
19 he once cycled through are more heavily trafficked and open space has been
20 developed. *Id.* at ¶ 8. He notes that during the years 1990-2014, the population
21 increase in Alameda County, where Berkeley is located, all resulted from
22 immigration. *Id.* at ¶ 11. By 2014, immigrants comprised 31% of the county
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1 population, or 483,750 individuals out of a total population of 1,559,308. *Id.* He
 2 states that in Alameda County, “the portion of the population comprised of
 3 immigrants soared from 18 percent in 1990 to 31 percent in 2014, to a total of
 4 about half a million,” not counting offspring. *Id.* Mr. Oberlink asserts that:
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6 Had DHS considered the environmental implications of its
 7 immigration actions, it might have chosen different actions, resulting
 8 in a California and an America with lower levels of population, more
 9 open space and wildlife habitat, and less environmental damage than
 10 that which we have today. Failure to review future actions could
 11 condemn this country to never-ending population growth and further
 diminution of natural resources.

12 *Id.* at ¶ 19.

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 14 38. Richard Alan Schneider is the Chair of CAPS. R. Schneider Aff., attached
 15 hereto as Ex. 12 at ¶ 2. Mr. Schneider has lived for nearly fifty years in California,
 16 mostly in Oakland. *Id.* at ¶ 1. Mr. Schneider, a conservationist and scientist, has
 17 “spent thousands of hours fighting to protect open space in the Bay Area” *Id.*
 18 at ¶ 13. He states:
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 21 Since 2000, I have orchestrated nine open space initiative campaigns
 22 in Alameda and Contra Costa Counties—formulating policies to
 23 protect the land, helping write the text to enact those policies,
 24 organizing signature drives to qualify the initiatives for the ballot,
 25 raising money for election campaigns, and then walking precincts and
 26 distributing literature in favor of those ballot measures. For each
 27 initiative I have put in hundreds of hours of volunteer time, and when
 28 an initiative passes, as most have, they must be defended in court if
 the developers sue; and after they are successfully defended, they
 must be continually monitored to make sure they are implemented and
 enforced by the local jurisdiction.

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2 *Id.* at ¶ 12.

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4 39. Mr. Schneider has spent so much time trying to protect open space because
5 he enjoys observing native California species, such as hawks and eagles, and
6 irreplaceable native habitats. *Id.* at ¶¶ 18-19. The species he treasures and the open
7 space he loves regularly disappear. *Id.* He states that “California leads the nation in
8 the number of species at risk of extinction and the number of endemic species at
9 risk, those species that occur nowhere else in the world.” *Id.* at ¶ 18. The
10 disappearance of nature and wildlife is deeply disturbing to Mr. Schneider. *See id.*
11 at ¶¶ 19-20. Land is routinely bulldozed for new construction, all in service of
12 accommodating endless population growth:
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17 Is it really too many people that are causing this loss of wildlife? In
18 California, the answer is most emphatically yes. The California
19 Department of Fish and Wildlife, in its Atlas of the Biodiversity of
20 California, states unequivocally, “Habitat loss due to human
21 population growth presents the single biggest problem facing native
22 plants and animals in California.”

23
24 *Id.* at ¶ 20

25 40. Mr. Schneider observes that presently, all of California’s population growth
26 is “coming from foreign immigration and births to immigrants.” *Id.* at ¶ 25.

27 California’s population continues to climb even though more U.S. citizens leave
28 California for other states than move to California. *Id.* He views population growth

1 as “one of the greatest threats to the natural world.” *Id.* at ¶ 27. And, like other
2 affiants, he is “amazed and appalled by DHS’s total abdication of its legal
3 obligations under NEPA.” *Id.* at ¶ 26.
4

5 41. Scientists and Environmentalists for Population Stabilization (“SEPS”) is a
6 small, informal, non-governmental organization run by scientists, but open to all.
7
8 *See generally* Scientists and Environmentalists for Population Stabilization,
9 <http://www.populationstabilization.org/index.html> (last visited on Dec. 8, 2017). It
10 currently has about 50 members throughout the United States. *Id.* SEPS’s mission
11 is to improve understanding within the U.S. scientific, educational, and
12 environmental communities of the fact of overpopulation and its social, economic,
13 and environmental consequences at both the national and global levels. *See*
14 *generally id.* SEPS advocates for U.S. population stabilization, followed by its
15 gradual reduction to a sustainable level through humane, non-coercive means. *Id.*
16 SEPS also advocates for a gradual transition to ecological economics for our
17 economic system. *See generally id.* It chiefly advocates by operating exhibitor
18 booths addressing population stabilization at the annual meetings of scientific
19 societies; SEPS is usually the only U.S. organization of its kind at these meetings.
20
21 *See id.*
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26 42. Dr. Stuart Hurlbert is the president of SEPS and a longtime member of
27 CAPS. S. Hurlbert Aff., attached hereto as Ex. 13 at ¶¶ 4, 16. Dr. Hurlbert is
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Professor Emeritus of Ecology at San Diego State University and has lived in San Diego and Del Mar, California, since 1970. *Id.* The negative impacts of constant population growth have been an ongoing subject of personal and professional concern for Dr. Hurlbert for many years. *Id.* at ¶¶ 1-2. San Diego County’s population has more than doubled from 1.36 to 3.30 million people since 1970.⁴ A substantial share of the population growth is the result of immigration. As an example, the immigrant share of the population in San Diego County has risen from 17.2% in 1990 to 23.4% in 2014. S. Hurlbert Aff. at ¶ 5. Unending population growth translates into more traffic, despite the addition of new freeways and expansion of existing roads. *Id.* at ¶ 5. Dr. Hurlbert avers that ever more traffic, and the congestion it creates, means “loss of time, restriction of travel schedules, and increased aggravation [which] has had a negative impact” on him. *Id.* A particular source of unhappiness is the increasing degradation of Mission Trails Regional Park, one of the largest urban parks in the United States, which Dr. Hurlbert has enjoyed both personally and professionally over the decades, for

⁴ See *Population of San Diego County*, Population.us, <http://population.us/county/ca/san-diego-county/> (last visited on Oct. 15, 2016); Tatiana Sanchez, *SD County second largest in CA, despite slow growth*, The San Diego Union Tribune, (Jan. 4, 2016), <http://www.sandiegouniontribune.com/news/border-baja-california/sdut-san-diego-county-population-2016jan04-story.html>.

1 hiking, birdwatching, and class trips. *Id.* at ¶ 7. The vastly increased use of the park
2 and its concomitant deterioration over the decades has corresponded with the
3 population growth of San Diego County. *See id.* Areas in Del Mar that Dr. Hurlbert
4 used to hike with his son are now covered with “new highways, new housing
5 developments and new shopping centers.” *Id.* at ¶ 8. For Dr. Hurlbert, “[o]ne of the
6 biggest ongoing, population-driven environmental disasters in Southern California
7 is what is happening at the Salton Sea.” *Id.* at ¶ 9. Dr. Hurlbert has studied the
8 Salton Sea for several decades. It is “one of the most important habitats for
9 waterbirds of diverse sorts in the Southwest” and Dr. Hurlbert has enjoyed bird
10 watching there for fifty years. *Id.* at ¶¶ 9, 11. Much to Dr. Hurlbert’s dismay,
11 population growth now threatens the Salton Sea because the water that drains into
12 it is now being tapped for diversion to facilitate population growth in coastal
13 California. *See id.* at ¶ 9. “It pains me greatly to be a witness to its population-
14 driven demise.” *Id.* at ¶ 11. Dr. Hurlbert is well acquainted with NEPA and
15 distinctly recalls being “greatly pleased at its passage, with its clear references to
16 the ‘profound influences of population growth’ and ‘the critical importance of
17 restoring and maintaining environmental quality’ and the need to ‘achieve a
18 balance between population and resource use.’” *Id.* at ¶ 16. He notes that
19 population growth in both California and the United States is now driven primarily
20 by immigration, and “[i]f DHS and its predecessor agencies had been doing proper
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1 NEPA analyses all along, it might have changed its policies long ago, and I might
2 have seen much less damage occur to the places I love.” *Id.* at ¶ 19.

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4 43. Glen Colton has lived in Fort Collins, Colorado, for 37 years. G. Colton
5 Aff., attached as Ex. 14 at ¶ 1. When he moved to Fort Collins, the town had
6 65,000 residents and was surrounded by “wide open spaces” and agricultural land.
7
8 *Id.* at ¶ 3. At that time Fort Collins was “an idyllic place to live, work, and raise a
9 family.” *Id.* at ¶ 3. Over the decades, however, the town’s population has soared to
10 160,000 today. *Id.* at ¶ 4. Its population is expected to grow by another 80,000 over
11
12 the next 10 to 15 years with no end to the growth in sight. *See id.* Many of the
13 agricultural areas and “wide open spaces” that used to surround the city are gone.
14
15 *See id.* The population of the surrounding region is “projected to nearly double”
16 from 500,000 to one million people within 20 years, with no end in sight. *See id.*
17
18 Mr. Colton is negatively impacted by the endless surge of population growth which
19 causes sprawl, degradation of the Poudre River, loss of nature and wildlife,
20 increasing light and air pollution, and increasing traffic and congestion. *See id.* at
21 ¶¶ 5-7. Like Mr. Oberlink, Mr. Colton’s enjoyment of protected public land in the
22 region has diminished because more and more users are “putting increasing
23 pressure on trails, fragile habitat and wildlife.” *Id.* at ¶ 8. He unhappily notes that
24 Estes Park, the gateway to Rocky Mountain National Park, has changed over the
25 years he has visited and now “is a crowded, congested mess” *Id.* at ¶ 8. The
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1 destruction of the natural world from “rampant and destructive effects of
2 population growth” is evident to Mr. Colton as he travels around the western
3 United States. *Id.* at ¶ 10. He states that “[w]ater issues are becoming increasingly
4 dire, infrastructure is overloaded, wildlife habitat is being destroyed, development
5 is rapidly encroaching on fire prone areas, congestion and crowding is widespread,
6 and consumption and resulting energy usage . . . are increasing.” *Id.* He does not
7 believe that this endless population growth is ecologically sustainable, and indeed
8 feels “incredibly betrayed and cheated by the United States” because he chose to
9 have only one child to help stabilize the nation’s population yet the federal
10 government has embraced a national population policy that imposes unending
11 massive population growth through immigration. *Id.* at ¶ 15. DHS and the State
12 Department are “de facto U.S. growth spigot[s]” that have completely ignored
13 NEPA. *Id.* at ¶ 17. If these agencies had complied with NEPA, “the US
14 landscape . . . would most likely look very different today.” *Id.*

20 44. Caren Cowan has been the Executive Director of the New Mexico
21 Cattlegrowers’ Association (“NMCGA”) for nineteen years. C. Cowan Aff.,
22 attached hereto as Ex. 15 at ¶ 2. The purpose of NMCGA is to promote the
23 interests of the cattle-ranching community in New Mexico and nineteen other
24 states. *Id.* As Ms. Cowan states, “We preserve and protect our land not only
25 because we depend on the land economically, but also because we love our land
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1 and way of life. We also seek to protect the land in order to ensure the wellbeing
2 and opportunities of generations to come.” *Id.* at ¶ 3. Ms. Cowan’s family has been
3 continuously ranching in Cochise County, Arizona, since 1884, and she owns part
4 of a ranch near Elfrida, Arizona. *Id.* at ¶ 4. She has always enjoyed being on the
5 borderlands and calls them “a special place.” *Id.* at ¶ 6. Ms. Cowan states, “I
6 experience a spiritual renewal when I am out in these vast open spaces with no
7 sounds other than wildlife and livestock, and not a person for miles around.” *Id.*
8 Because of the constant fear of illegal border-crossers, Ms. Cowan no longer feels
9 safe out on the range. *Id.* at ¶¶ 5, 7 Her grandmother’s homestead was ransacked
10 and despoiled by illegal aliens on multiple occasions. *Id.* at ¶ 9. Many members of
11 NMCGA have also experienced criminal activities on their lands, including stolen
12 vehicles and break-ins. *Id.* at ¶ 7. Ms. Cowan understands that DHS has failed to
13 consider any of the environmental impacts resulting from its myriad of agency
14 actions, and finds that failure a “shocking disappointment.” *Id.* at ¶ 10.

20 45. John W. Ladd is a supervisor for the HNRDC and a member of the AACD.
21 J. Ladd Aff., attached hereto as Ex. 16 at ¶ 4. Mr. Ladd has lived his entire life on a
22 16,400-acre ranch on the Arizona/Mexico border. *Id.* at ¶ 1. The ranch has been in
23 his family since 1896. *Id.* at ¶ 1. He states that “[r]anching on this land is my
24 heritage--passed from previous generations to me, and it is a way of life I have
25 always hoped to pass on to many generations to come.” *Id.* During his youth,
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1 illegal border-crossers were not much of a problem, but he states the flow “has
2 become such a problem that it has ruled our lives and dictated the way we ranch.
3 An endless stream of illegal border crossers has trashed my land and destroyed my
4 enjoyment of my property.” *Id.* at ¶ 2. The grass has stopped growing in areas used
5 as trails and “[t]he ground where grasses no longer grow is an eyesore that reminds
6 me of how much environmental damage I am constantly suffering.” *Id.* at ¶ 9. He
7 estimates that hundreds of thousands of illegal border-crossers have been caught by
8 the border patrol on his property. *Id.* at ¶ 5. This huge flow of people has led to the
9 dumping of approximately 20 tons of trash on his property—too much to control,
10 despite the efforts of Mr. Ladd and his family to pick up as much as they can. *See*
11 *id.* at ¶ 6. Much of this garbage ultimately gets swept into the San Pedro River,
12 which was clean enough to swim in when he was young but is now polluted with
13 trash and human waste. *See id.* at ¶¶ 6-7. Mr. Ladd understands that DHS has never
14 done “any environmental analysis that acknowledges that arriving aliens have
15 environmental impacts.” *Id.* at ¶ 13. This failure affects Mr. Ladd personally,
16 because “[i]f DHS had done the proper NEPA analysis of the environmental
17 impacts of its policies before implementing them, perhaps it would have realized
18 that the environmental costs were too severe. The damages to the environment on
19 my land might never occurred if DHS and the INS had followed NEPA.” *Id.* at ¶
20 14.
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46. John Charles Oliver is the President of Floridians for a Sustainable Population (“FSP”). J. Oliver Aff., attached hereto as Ex. 17 at ¶¶ 4, 17. FSP was established as a not-for-profit in 1994 in an effort to educate Floridians about the necessity to stabilize Florida’s human population in order “to preserve and protect our natural resources and open spaces for future generations to enjoy.” *Id.* at ¶ 17. FSP recognizes that immigration is now the engine driving population growth in both Florida and the entire United States. *See id.* FSP operates a website and, among other things, commissioned a sprawl study in 2000 to coincide with Florida Overpopulation Awareness Week. *Id.* In the fifteen years following that 2000 campaign, Florida’s population has continued to mushroom, from about 16 million to over 20 million. *Id.* at ¶ 16. Mr. Oliver has lived 28 years in Southeastern Florida—Broward, Palm Beach, and Martin Counties. *Id.* at ¶¶ 1, 6. The population of Broward increased from 628,980 to 1,815,269 from 1970 to 2014. *Id.* at ¶ 16. Palm Beach County tells much the same story; its population grew from 353,158 in 1970 to 1,359,074 in 2014. *Id.* Martin County’s population has increased from 28,460 in 1970 to 149,658 in 2014. *Id.* During the years he has lived in Florida, Mr. Oliver has witnessed and experienced the harmful impacts of intense population growth upon the natural world, especially water habitats. *Id.* at ¶ 13. Mr. Oliver is a certified diver and has “done extensive diving and fishing on the reefs of Broward and Palm Beach Counties, the Florida Keys, the Bahamas,

1 and Cozumel Mexico.” *Id.* at ¶ 2. Coral reefs he enjoyed so much in the 1970’s are
 2 largely gone now: “Today, the beautiful coral reefs I dived and fished [on] in
 3 Broward and Palm Beach County are no longer living[;] [93%] of hard corals have
 4 vanished due to six municipal sewage outfalls, port-dredging, and coral bleaching
 5 due to carbon acidification caused by the increase of fossil fuels being burned.” *Id.*
 6 at ¶ 9. Formerly an avid fisher, Mr. Oliver no longer fishes as often as he did
 7 before because boat launches are backed up and it is hard to find a place to put
 8 one’s boat in the water. *Id.* at ¶ 14. Previously-free boat ramps now charge money.
 9 *Id.* Moreover, numerous waterways, especially the St. Lucie River, have become
 10 polluted and contaminated by the septic tanks installed for thousands of new
 11 homes built along the river and fertilizer nitrate runoff.

12 The river grasses that covered the bottom of the estuary are now dead
 13 and the bottom is covered with green slime. These grasses were
 14 essential to sustaining the entire food chain of fish, birds, turtles, and
 15 marine mammals. Many of the dolphins and manatees have sores on
 16 their bodies and some have died. Unfortunately, this scenario is being
 17 repeated at an alarming pace in waters across the state. The estuary of
 18 the west coast of Florida by Pine Island that was one of my favorite
 19 places to fish has also seen declining water quality.

20 *Id.* at ¶ 13. Mr. Oliver further notes that “[m]any species of table fare fish are now
 21 heavily regulated due to overharvesting . . . [n]umerous reefs in the Florida Keys
 22 have become Marine Sanctuaries and are totally off limits to fishing.” *Id.* at ¶ 15.
 23 Florida’s rapid population growth over the past fifty years has been exacerbated by
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1 large inflows of immigrants—over 25% of Florida’s 20-million plus-population are
2 immigrants and their children. *Id.* at ¶ 16. Most of Florida’s recent population
3 growth is presently the result of federal immigration policies—67% according to a
4 recent report, “Vanishing Open Spaces.” *Id.* at ¶ 19. Mr. Oliver understands that
5 DHS has not considered the environmental impacts of its myriad immigration-
6 related actions, all the while, he says, “it has been established without question that
7 the doubling and tripling of our population has had a very detrimental effect on our
8 environment.” *Id.* at ¶ 23.

12 47. Ralph Pope is a retired Natural Resource Management/Ecologist for the U.S.
13 Forest Service. R. Pope Aff., attached hereto as Ex. 18 at ¶ 7. Mr. Pope has lived in
14 Southeastern Arizona and Southwestern New Mexico along the U.S/Mexico border
15 for most of his life. *See id.* at ¶¶ 1-2. His affidavit details his personal and
16 professional pleasure over the decades, experiencing and enjoying the entire
17 “scope and range of southwest ecosystems, from desert to high elevation mixed
18 conifers.” *See id.* at ¶ 10. He notes his particular affection for the region’s famed
19 “sky islands”—hot spots of great biodiversity found nowhere else on the globe. *Id.*
20 Mr. Pope devoted his career to monitoring and trying to protect the Piloncillo,
21 Chiricahua, and Dragoon Mountains, federal lands which make up the Douglas
22 Ranger District. *Id.* at ¶ 4. His job with the Forest Service entailed monitoring
23 ecosystem health and livestock grazing operations on federal lands. *Id.*

1 Unfortunately, over the decades, Mr. Pope has personally witnessed the ecological
2 degradation of “unique native ecosystems located on hundreds of thousands of
3 acres of once pristine and unspoiled lands” *Id.* at ¶ 5. This degradation was
4 caused by illegal border-crossings, whose destructive impacts include trampled
5 native vegetation, garbage, polluted water, destroyed wilderness and fires that burn
6 out of control. *Id.* at ¶ 11. Mr. Pope’s affidavit describes the destruction of Burro
7 Springs and the Chiricahua Mountain Range that occurred as a result of fires set by
8 illegal border-crossers. *See id.* at ¶¶ 11, 14. One significant negative impact of such
9 fires is that much of the native vegetation gets burned away and is replaced by
10 invasives. *See id.* at ¶ 15. He states that “[a]s an ecologist, this upsets me
11 tremendously.” *Id.*

12 **B. DEFENDANTS**

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18 48. Defendant DHS is a federal agency which was established in 2003, pursuant
19 to the Homeland Security Act passed on November 25, 2002. *See* Homeland
20 Security Act of 2002, Pub. L. No. 107–296, 116 Stat. 2135 (2002) (“Act”).
21 Pursuant to this grant of authority, DHS is mandated to administer border security,
22 immigration enforcement, naturalization, and establish and administer rules
23 governing the granting of visas or other forms of permission to enter the country.
24 *See* 116 Stat. at 2178, 2187. By the authority of the Act, DHS took over the
25 functions of government formerly delegated by Congress to the INS, a division
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1 since 1940 of the Department of Justice. DHS now carries out the functions of the
 2 former INS, that is, the regulation of immigration into the U.S., through three sub-
 3 agencies, U.S. Customs and Border Protection (“CBP”), U.S. Citizenship and
 4 Immigration Services (“USCIS”), and Immigration and Customs Enforcement
 5 (“ICE”).⁵ As a federal agency, DHS is subject to NEPA and the APA. In
 6 accordance with NEPA, DHS has adopted NEPA regulations to guide its
 7 discretionary agency action decision making. *See* 42 U.S.C. § 4333 (2016). *See* Ex.
 8 1 and Ex. 2. *See also Synopsis of Administrative Record to Support Proposed New*
 9 *Categorical Exclusions Under the National Environmental Policy Act*, Dep’t of
 10 Homeland Sec. (Dec. 2014),
 11 [https://www.dhs.gov/sites/default/files/publications/CATEXs_admin%20record_ve](https://www.dhs.gov/sites/default/files/publications/CATEXs_admin%20record_version_Final_Dec2014_508compliantversion.pdf)
 12 [rsion_Final_Dec2014_508compliantversion.pdf](https://www.dhs.gov/sites/default/files/publications/CATEXs_admin%20record_version_Final_Dec2014_508compliantversion.pdf).

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 18 49. Defendant Kirstjen Nielsen is sued in her official capacity as the Secretary of
 19 DHS (“Secretary”). The Secretary is authorized to lead and manage DHS. The
 20 Secretary is responsible for ensuring that DHS’s actions, such as those actions at
 21 issue *sub judice*, comply with the requirements of NEPA.
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 23
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26 ⁵ *Our History*, U.S. Citizenship and Immigration Servs. (May 25, 2011),
 27 <https://www.uscis.gov/about-us/our-history> (providing a discussion of the history
 28 of the organization of immigration regulation within the U.S. government).

GENERAL ALLEGATIONS

People Cause Environmental Impacts. DHS's Programs That Regulate the Entry Into and Settlement of People in the United States Causes Human Population Growth. Accordingly, NEPA Requires Analysis by DHS of these Programs.

50. DHS fails to analyze the environmental impacts of its programs/actions that have allowed and continue to allow millions of foreign nationals to enter into and settle in the United States. These programs/actions result in significant population growth that produces ongoing myriad environmental impacts. Plaintiffs accordingly assert that NEPA requires DHS to assess the impacts of its programs/actions under NEPA:

i) NEPA requires Federal agencies to apply NEPA when undertaking federal actions and making decisions that could have a significant impact on the human environment. CEQ regulation 40 C.F.R. §1508.18(a) provides that federal programs constitute "major federal actions" subject to NEPA compliance. 40 C.F.R. §1508.18(3) provides that federal actions include: "Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive."

1 ii) People cause myriad impacts to the environment. Additional people result in
2 additional impacts to the environment. *See* Ex. 5.

3
4 iii) The primary factor driving U.S. population growth is international
5 migration. Immigrants from abroad add directly to the nation's population by their
6 arrival and by the children they have after they come. Because the fertility of
7 American women has been at or below replacement level for many years—2.1
8 children per women—absent immigration there would be very little long-term
9 population growth in the United States. Census Bureau projections published in
10 2014 indicate that because of future immigration the U.S. population will be 95
11 million larger in 2060 than it would be absent immigration. *See* Ex. 4 at 182. The
12 Pew Research center reported in 2015 that the 72 million post-1965 immigrants
13 and their offspring and grandchildren account “for the majority of U.S. population
14 growth in the past five decades.” *See* Ex. 4 at 183. Indeed, Plaintiffs’ demographic
15 expert Dr. Camarota estimates that during the years 2010-2014, immigration and
16 immigrant offspring added 8.3 million people to the U.S. population. This increase
17 comprises 87% of U.S. population growth during that brief period. *Id.*

18
19 iv) DHS is the agency charged with the mission of regulating and controlling
20 the entry into and settlement of foreign nationals in the United States. DHS
21 therefore is the agency that regulates most of the population growth of the United
22 States.

1 v) It is thus indisputable that DHS controls one of the most environmentally
2 significant mandates delegated to any federal agency, and yet DHS fails even to
3 consider the direct, much less the enormous indirect and cumulative, environmental
4 impacts of its programs relating to its statutory mission.
5

6 51. DHS, like its predecessor agency INS, has continuously failed to make well-
7 informed decisions; has failed to conduct reasoned analyses of potential impacts to
8 the human environment resulting from its programs; and has failed to engage the
9 public on the range of potential environmental impacts or create public records so
10 that interested or affected members of the public could learn about the
11 environmental implications of DHS programs. Yet all of these steps are required by
12 both NEPA and the APA.
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16 52. Despite the enormous impacts to the human environment resulting from
17 DHS's programs regulating the entry into and settlement of foreign nationals in the
18 United States, DHS has failed to initiate *any* NEPA review for these ongoing
19 programs. DHS has implemented at least eight programs regulating the entry and
20 settlement of foreign nationals promulgated pursuant to its authority under the
21 nation's immigration laws, specifically the Immigration and Nationality Act, Pub.
22 L. No. 82-414, 66 Stat. 163 (1952), (the "INA"). These programs were created and
23 updated through DHS's ongoing exercise of discretion, via the adoption of both
24 regulations and policy memoranda. The programs at issue in this complaint, as well
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1 as other DHS' exercises of discretion, have resulted and will continue to result in
2 impacts to the human environment, including but not limited to significant ongoing
3 population growth in the United States; unending increases in the population
4 density of numerous localities throughout the United States (especially California).
5 In addition, as a result of the implementation of four of these programs, the entry of
6 large numbers of foreign nationals has led to further significant, ongoing
7 environmental degradation along the Southwest border.
8

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10 53. In the few paltry places where DHS makes reference to NEPA with respect
11 to its actions regulating the entry into and settlement of foreigners in the United
12 States, DHS does so in a dismissive manner, and its record of decisions are
13 woefully devoid of even the most basic forms of analytical support.
14

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16 54. One can only conclude—as the Plaintiffs in this case have—that DHS, with
17 its outsized influence on our nation's population growth and *ipso facto* upon our
18 nation's environmental health, has acted and continues to act in a manner that is
19 arbitrary and capricious with respect to its NEPA obligations.
20

21
22 **DHS' Eight Programs Regulating the Entry Into and Settlement of Foreign**
23 **Nationals in the United States**
24

25 55. DHS has established, pursuant to statutory authority or executive directive,
26 and in some cases with input from other federal agencies, at least eight programs
27 that accept and allow for long-term settlement of foreign nationals in the country.
28

1 These eight programs do not represent *all* entry and settlement by foreign nationals
 2 in the United States, but they do comprise the bulk of the programs substantially
 3 administered by DHS that allow for foreign nationals' entry and long-term
 4 settlement. These programs were created through systematic and connected agency
 5 decisions allocating agency resources in order to implement specific statutory
 6 programs or executive directives. The eight programs are:
 7

- 9 1) Employment based immigration authorized by INA § 203(b);
- 10 2) Family based immigration, authorized by INA § 203 (a) and INA § 201(b);
- 11 3) Long term nonimmigrant visas, authorized by INA § 214;
- 12 4) Parole, authorized by INA § 212 (d)(5)(A);
- 13 5) Temporary Protective Status, authorized by INA § 244;
- 14 6) Refugees, authorized by INA § 207;
- 15 7) Asylum, authorized by INA § 208; and
- 16 8) Deferred Action for Childhood Arrivals ("DACA"), authorized by executive
 17 order.⁶
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23 ⁶ The DACA program is an ongoing program under which hundreds of thousands
 24 of foreign nationals currently hold two-year permits to remain and work in the
 25 United States. DACA is a special case among the ongoing programs in this lawsuit
 26 implemented by DHS because it authorized by executive directive rather than
 27 statutory authority. *See* Memorandum by Janet Napolitano, "Exercising
 28 Prosecutorial Discretion with Respect to Individuals Who Came to the United
 States as Children," June 15, 2012 in Ex. 3 at 171-173. Its future is currently
 uncertain, as the Department of Justice currently takes the position (undisputed by

1 56. DHS administers these programs in its discretion primarily through the
2 promulgation of regulations and the adoption of policy memoranda. The
3 regulations and policy memoranda DHS adopts are interdependent and are done in
4 order to carry out the authorized programs.
5

6 57. The eight programs at issue in this lawsuit have led to the entry and
7 settlement of approximately 35 million foreign nationals in total. Table 1 below,
8 compiled by Plaintiffs' Expert Jessica Vaughan and also included in Ex. 3 at 128,
9 presents her best estimate of how many foreign nationals have arrived through each
10 program.
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22 the Plaintiffs) that such a program is only lawful if authorized by statute, as
23 proposed by some members of Congress. A significant number of individuals
24 currently hold permits that will not expire until 2019, and DHS will continue to
25 process applications until March 5, 2018, so under current plans, which are subject
26 to change, individuals will continue to hold valid DACA permits at least until
27 March 5, 2020. DACA is thus an ongoing program. *See* President Donald J.
28 Trump, Statement from President Donald J. Trump (Sept. 5, 2017) (discussing
DACA). <https://www.whitehouse.gov/the-press-office/2017/09/05/statement-president-donald-j-trump>.

Table 1:

Table of Total* Number of Individuals Added on Long Term or Permanent Basis to United States Population by Program since each Program's Creation in Substantially Current Form, based on available information. **

| DHS Program | Total Number Admitted or Issued |
|--|---------------------------------|
| Family Based Immigration Admissions between 1992 and 2015 | 14,622, 847 |
| Employment Based Immigration Admissions between 1992 and 2015 | 3,274,245 |
| Long Term Non-Immigrant Visa Issuances between 1992 and 2016 *** | 12, 214,328 |
| Parole Admissions between 1996 and 2015 | 53,378 |
| Temporary Protective Status Grants (Estimated) between 1992 and 2017 | 377, 218 |
| Refugee Admissions between 1980 and 2015 | 3,050,023 |
| Asylum Approvals/Adjustments to LPR Status between 1980 and 2015**** | 789,935 |
| Deferred Action for Childhood Arrivals Grants between 2012-2017 | 793,026 |

* The cutoff date where information is available varies by program.

**While most of these foreign nationals were added permanently, in some programs, legal status was never made permanent.

*** Breakdown of categories included in Table 2.

****Includes counts of approvals for 1980-1991 and counts of adjustments of status from 1992-2015.

1
2 58. Furthermore, when foreign nationals enter the United States, the resulting
3 population growth is not merely limited to those individuals who enter the country
4 and the children they will have. Foreign nationals who ultimately become lawful
5 permanent residents (“LPRs”) can themselves sponsor further immigration to the
6 country via what is known as “chain migration.” One prominent team of
7 researchers has calculated a chain migration “multiplier.”⁷ This multiplier is based
8 on data on family-sponsored immigration for the period 1996-2000. According to
9 this research, every 100 original immigrants to the United States during this period
10 sponsored another 345 family members as immigrants. *See* Ex. 3 at 108-109.
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14 59. These eight programs are described and analyzed in Ex. 3 by expert Jessica
15 Vaughan. *See* Ex. 3, Ex. A and B thereto, at 106-132. Ms. Vaughan identifies in
16 Ex. 3, specifically in Ex. C: Regulations and Policy Memoranda Implementing
17 DHS Programs, 81 of the specific, discrete instances where DHS has undertaken
18 regulatory action to implement each of the eight programs. *See* Ex. 3 at 134-138.
19 Because the implementation of these eight programs has also been substantially
20 affected by ad-hoc policy decisions that DHS never promulgated as regulations,
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25 ⁷ Stacie Carr & Marta Tienda, *Family Sponsorship and Late-Age Immigration in*
26 *Aging America: Revised and Expanded Estimates of Chained Migration*, Popul.
27 Res. Policy Rev. (Dec. 2013), available at
28 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3884518/>.

1 Ms. Vaughan also identifies and includes five specific instances of policy
2 memoranda revising the programs. These five are listed and included in full. *See*
3 Ex. 3 at 138-175. As each of these programs is extremely complex, Ms. Vaughan
4 does not purport to have identified every single instance when these programs were
5 revised. Ms. Vaughan briefly describes how each regulation or policy decision
6 implements each program. *See* Ex. 3 at 134-139.
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9 60. The vast scope of these eight programs is underscored by the large number
10 of ongoing rules promulgated under the INA and other implementing actions, none
11 of which received NEPA compliance. Because these actions cumulatively carry out
12 DHS's statutory mandate to regulate the entry into and settlement of foreign
13 nationals in the United States, NEPA review should have been initiated long ago.
14 DHS has repeatedly failed to initiate NEPA compliance at any point during its
15 administration of these ongoing programs, including promulgation of specific
16 regulations or adoption of final action through policy memoranda pursuant to its
17 authority to accept foreign nationals into the country under the INA.
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22 61. Ms. Vaughan's starting point for her best estimate of the number of individuals
23 in each program is the date that each program was created or overhauled by statute
24 or executive order. While the INA is the statute that governs all of the programs
25 (except for DACA), and it was first passed prior to NEPA, there have been several
26 large scale revisions of the INA by statute since its original passage that have either
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28

1 created or substantially overhauled the programs at issue. These modifications are:
2 the United States Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980)
3 (“Refugee Act”); the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat.
4 4978 (1990) (“IMMACT 90”); and the Illegal Immigration Reform and Immigrant
5 Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3001 (1996)
6 (“IIRIRA”). IMMACT 90 created the employment based immigration program
7 and TPS, and overhauled the family based immigration program and the
8 nonimmigrant visa program. IIRIRA overhauled parole. The Refugee Act
9 overhauled the refugee and asylum programs.
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13 62. For the long term nonimmigrant visa program, which is the most complex
14 program, Ms. Vaughan focuses on the long term nonimmigrant visas regulated
15 substantially by DHS (rather than other agencies), and includes in her totals those
16 foreign nationals who have entered under visas in the E, H, L, TN, O, P, T, and U
17 categories. *See* discussion of the long term nonimmigrant visa program in Ex. 3 at
18 112-117. Table 2, included below and also in Ex. 3 at 129, shows how many
19 foreign nationals have been admitted through each type of visa.
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Table 2: Long Term Non Immigrant Visa Category Included

| Included Visa Category | Total Since Visa Created Through 2016 |
|------------------------|---------------------------------------|
| E | 963,259 |
| H | 7,185,272***** |
| L | 2,829,315 |
| TN | 153,350***** |
| O | 308,663 |
| P | 759,518 |
| T | 4,070***** |
| U | 10,881***** |

*****Figures come from the State Department and do not include additional issuances processed by USCIS and CBP.

63. It is also notable that the population growth of many of these programs changes through the years. Ms. Vaughan has compiled two graphs illustrating the growth of these programs, Table 3 and Table 4, included below and in Ex. 3 at 130 and 131.

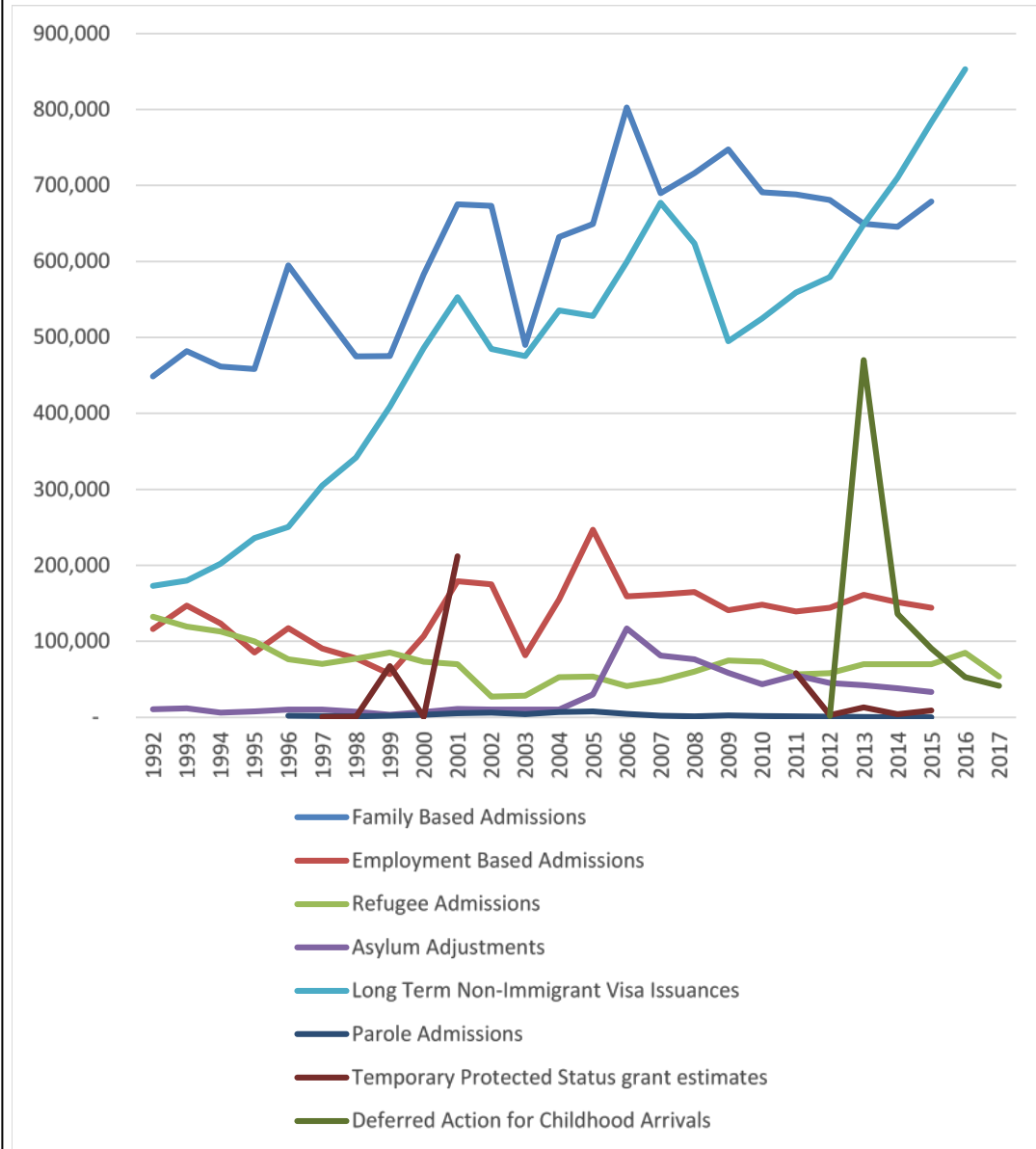
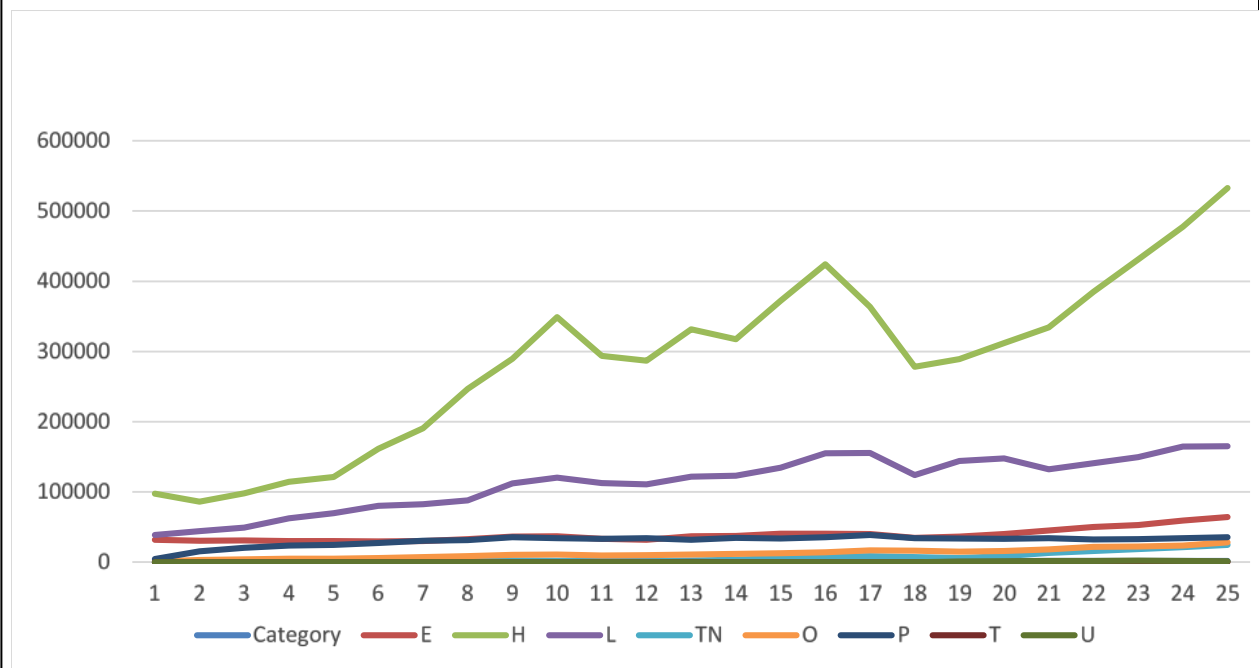
Table 3: Trend in Individuals Added over Time for United States for all programs

Table 4: Trend in Individuals Added for Long Term Nonimmigrant Visas

64. The population growth from all these programs has particularly impacted the states and metropolitan areas where Plaintiffs reside. Ms. Vaughan has illustrated these impacts in Table 5, included below and in Ex. 3 at 132.

Table 5: Number of Individuals Added by Geographic Region of Interest to Plaintiffs, where available:

| Long Term Permanent Residents By State for Selected Years | | | |
|---|--------------|-------------|-------------|
| (Temporary Visa Issuances) | | | |
| State | 1997 | 2002 | 2015 |
| California | 135,526 | 264,074 | 418,772 |
| Colorado | 10,271 | 26,592 | 31,992 |
| Florida | 67,440 | 175,821 | 198,641 |
| | | | |
| % of Total Issuances | 23% | 26% | 17% |
| | | | |
| | | | |
| Permanent Residents Admitted for Selected Metro Areas: 2003-2015 | | | |
| Metro Area | Total | | |
| Los Angeles/Long Beach/Anaheim, CA | 1,197,465 | | |
| San Diego/Carlsbad, CA | 241,915 | | |
| Denver/Aurora/Lakewood, CO | 104,640 | | |
| Miami/Ft. Lauderdale/W. Palm Beach, FL | 938,412 | | |
| Combined % of National Total | 11% | | |
| | | | |
| California | 2,836,791 | | |
| % of National Total | 21% | | |

65. In summary, these programs have resulted and continue to result in significant impacts through the population growth they induce in the United States. DHS has never subjected these programs to NEPA review.

66. The CEQ provides that population growth-inducing effects/impacts must be analyzed. 40 C.F.R. § 1508.8(b).

67. The programs are clearly growth-inducing because they produce “changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” 40 C.F.R. § 1508.8(b).

1 These growth-inducing impacts are felt not just at a national but at a local level, for
2 there are many areas of the country that have been particularly attractive to foreign
3 nationals settling in the United States. The population growth driven by settlement
4 of foreign nationals has been especially intense in California, Colorado, and
5 Florida, areas where Plaintiffs live.
6

7
8 68. For some of DHS' programs, population growth is not the only significant
9 environmental impact. While some of these programs only allow foreign nationals
10 initially to enter the country legally (employment based immigration, family based
11 immigration, long-term nonimmigrant visas, refugees, and some forms of parole),
12 others (TPS, asylum, DACA, and some forms of parole) allow foreign nationals
13 who have illegally entered or remained in the country to remain with federal
14 approval. Programs such as these not only add more settled population at the time
15 they are implemented, but also have further environmental impacts by encouraging
16 future unlawful entry.
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21 69. Encouraging illegal entry into and settlement in the country has significant
22 environmental impacts both from further increased population growth and by
23 creating incentives for large numbers of people to enter unlawfully at the border. In
24 recent decades, such large numbers of illegal aliens have crossed the southern
25 border illegally that the physical environment at the border has been substantially
26 degraded. Ms. Vaughan also explains how programs that reward illegal entry into
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and settlement in the country lead to further mass unlawful entry, including Parole, TPS, Asylum, and DACA. *See* Ex. D: How Certain DHS Programs Affect Land on the Southwest Border, of Ex. 3 at 176-180. This mass entry causes physical environmental impacts to the land on the border, as documented by affidavits by Fred Davis, Peggy Davis, Caren Cowan, John Ladd, and Ralph Pope. (Ex. 6, Ex. 7, Ex. 15, Ex. 16, and Ex. 18).

DHS's Categorical Exclusions

70. Prior to 2014, not only did DHS engage in no NEPA review of its programs regulating the entry into and settlement of foreign nationals in the United States, it also generally failed even to acknowledge the applicability of NEPA to these programs. Following its 2014 adoption of NEPA procedures, DHS began occasionally to cite NEPA when it promulgated regulations relating to the entry into and settlement of foreign nationals in the United States. Plaintiffs have documented the promulgation of only four rule revisions that acknowledge NEPA. Each of these citations to NEPA is arbitrary and capricious as applied:

71. On April 29, 2015, DHS promulgated Adjustments to Limitations on Designated School Official Assignments and Study by F-2 and M-2 Nonimmigrants, 80 Fed. Reg. 23680 (Apr. 29, 2015), amending 8 C.F.R. §§ 214.2 and 214.3, which regulate the Student and Exchange Visitor Program (“SEVP”). The rule revision makes it easier for schools to participate in the SEVP and permits

1 certain dependents of aliens to enroll in less than a full course of study at SEVP
2 certified schools. Adjustments to Limitations on Designated School Official
3 Assignments and Study by F-2 and M-2 Nonimmigrants, 80 Fed. Reg. 23680. DHS
4 categorically excluded 80 Fed. Reg. 23680 from NEPA analysis under DHS
5 Categorical Exclusion A3(d) as a “rule[] . . . that interpret[s] or amend[s] an
6 existing regulation without changing its environmental effect.”
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9 72. On March 11, 2016, DHS promulgated Improving and Expanding Training
10 Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap
11 Relief for All Eligible F-1 Students, 81 Fed. Reg. 13039 (Mar. 11, 2016),
12 amending 8 C.F.R. Parts 214 and 274a, to implement another revision to the
13 nonimmigrant visa program. Substantively, this regulation also expanded the
14 Student and Exchange Visitor program, by extending the length of time foreign
15 students with STEM (science, technology, engineering and math) degrees can
16 remain in the in the United States after graduation and work. DHS received over
17 900 public comments on this rule. Improving and Expanding Training
18 Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap
19 Relief for All Eligible F-1 Students, 81 Fed. Reg. at 13046. DHS categorically
20 excluded 81 Fed. Reg. 13039 from NEPA analysis under both Categorical
21 Exclusion A3(a), as a “rule[] . . . of a strictly administrative or procedural nature;”
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1 and A3(d), as a “rule[] . . .that interpret[s] or amend[s] an existing regulation
2 without changing its environmental effect.”

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4 73. On November 18, 2016, DHS promulgated Retention of EB-1, EB-2, and
5 EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled
6 Nonimmigrant Workers, 81 Fed. Reg. 82398 (Jan. 17, 2017), a Final Rule
7 amending “its regulations related to certain employment-based immigrant and
8 nonimmigrant visa programs.” Retention of EB-1, EB-2, and EB-3 Immigrant
9 Workers and Program Improvements Affecting High-Skilled Nonimmigrant
10 Workers, 81 Fed. Reg. 82398. According to DHS: “[t]he final rule is intended to
11 benefit U.S. employers and foreign workers participating in these programs by
12 streamlining the processes for employer sponsorship of nonimmigrant workers for
13 lawful permanent resident (LPR) status, increasing job portability and otherwise
14 providing stability and flexibility for such workers...” Retention of EB-1, EB-2,
15 and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled
16 Nonimmigrant Workers, 81 Fed. Reg. at 82399. The rule further provides: “DHS
17 estimates for the final rule that a maximum total of 361,766 individuals may be
18 eligible to apply for employment authorization based on compelling circumstances
19 in the first year of implementation of this rule and a maximum annual estimate of
20 64,561 individuals in the second and subsequent years.” Retention of EB-1, EB-2,
21 and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled
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Nonimmigrant Workers, 81 Fed. Reg. at 82473. DHS received 27,979 comments on this rule. Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. at 82412. Nonetheless, DHS categorically excluded it from NEPA analysis under DHS Categorical Exclusion A3(d). Circularly, the Final Rule stated: “DHS has determined that this rule does not individually or cumulatively have a significant effect on the human environment because it fits within the Categorical Exclusion found in MD 023–01 Rev. 01, Appendix A, Table 1, number A3(d).” Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. at 82475.

74. On January 17, 2017, DHS promulgated International Entrepreneur Rule, 82 Fed. Reg. 5238 (Jan. 17, 2017) to implement an addition to the parole program. Substantively, this rule created a new parole subprogram for “international entrepreneurs” to remain in the United States. DHS received 763 public comments regarding the rule. International Entrepreneur Rule, 82 Fed. Reg. at 5244. DHS categorically excluded 82 Fed. Reg. 5238 from NEPA analysis under DHS Categorical Exclusions A3(a) and A3(d). Interestingly, this Final Rule provides:

Environmental Policy Act (NEPA)

Comment: An advocacy organization stated that all rules, including immigration rules, are subject to review under the National Environmental Policy Act. The commenter suggested that, at minimum, an Environmental Assessment be conducted to account for

the growth-inducing impacts that would occur with an influx in population under this rule.

Response: DHS agrees that NEPA applies to this, as to every, final rulemaking. As explained in section IV.E of this preamble, the rule has been reviewed for environmental effects and found to be within two categorical exclusions from further review because experience has shown rules of this nature have no significant impacts on the environment. DHS also notes that any entrepreneurial ventures undertaken will be governed by local, state and federal laws and regulations, including those protecting human health and the environment. We disagree with the commenter's assertion that an Environmental Assessment is required.

International Entrepreneur Rule, 82 Fed. Reg. at 5270.

Programmatic Environmental Assessment for Actions to Address an Increased Influx of Unaccompanied Alien Children and Family Units Across the Southwest Border of the United States.

75. DHS did conduct a NEPA review in one instance related to the entry into and settlement of foreign nationals in the United States. On June 2, 2014, President Obama issued a Presidential Memorandum entitled "Response to the Influx of Unaccompanied Alien Children across the Southwest Border," in which he directed the Secretary of Homeland Security to establish an interagency working group to address the "humanitarian aspects" of a large influx of foreign nationals. *See* Ex. 19, attached hereto, at 569 ("Southwest Border Memo"). The Southwest Border Memo's goal was to assure a unified response by the federal government to provide "housing, care, medical treatment, and transportation" to the unaccompanied alien children crossing the Southwest border. *Id.*

76. DHS determined that the Southwest Border Memo and the actions DHS took in response to it constitute a federal action subject to NEPA. Accordingly, DHS prepared a “Programmatic Environmental Assessment for Actions to Address an Increased Influx of Unaccompanied Alien Children and Family Units Across the Southwest Border of the United States” (“PEA”), attached hereto as Ex. 20, together with a FONSI that was issued on August 12, 2014, attached hereto as Ex. 21.

77. The PEA provides, in relevant part:

In addition to the influx of unaccompanied alien children, there is also an increase in the number of family units entering the Unites [*sic*] States. [DHS] is responsible for the apprehension, processing, detention, and removal of such persons crossing the southwest border into the United States without authorization. The unprecedented increase in the number of apprehended persons has the potential to fill or exceed the capacity of the DHS supporting infrastructure (real property for processing and housing apprehended persons, services including medical care, transportation, utilities, meals, hygiene, recreation, etc.) currently available. Therefore, action is being considered at the DHS level to provide increased and expedited allocation of Departmental resources in the following three areas:

- 1) Provide adequate facilities for Customs and Border Protection (CBP) to safely house unaccompanied alien children (normally for no more than 72 hours) and family units

1 until they can be transferred to the department of Health and
 2 Human Services (HHS) and Immigrations [*sic*] and Customs
 3 Enforcement (ICE) respectively, and provide adequate
 4 facilities for ICE to safely house family units;

5 2) Provide transportation (land, air, water) between intake,
 6 processing, and housing facilities, as well as between these
 7 facilities and physicians and dentists [*sic*] offices, hospitals,
 8 consular offices, and airports or other transportations hubs, and

9 3) Provide medical care, including care to treat, prevent, and
 10 minimize the spread of communicable illnesses.

11
 12 Ex. 20 at 571.

13 78. The PEA states that DHS's needs for increased support infrastructure (for
 14 example, housing and associated services, transportation, and medical care) while
 15 the foreign nationals are in DHS's custody will result in only "minor" and
 16 "temporary" environmental impacts. *See* Ex. 21 at 607. DHS's NEPA review only
 17 addresses the direct physical impacts resulting from DHS's temporary custody of
 18 foreign nationals. The PEA and FONSI fail to recognize that the foreign nationals
 19 comprising the "increased influx of unaccompanied alien children and family
 20 units" subject to the June 2, 2104, action entered the United States with the intent
 21 to settle in this nation. Many have indeed settled in the United States. Like the
 22 programs set forth *supra*, the PEA and the FONSI issued for this action fail to
 23 address the environmental impacts on the Southwest border resulting from the
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1 crossing of these foreign nationals, or the population growth resulting from their
 2 presence. The PEA and the FONSI thus illustrate DHS's institutional blindness to
 3 the environmental impacts of people arriving and settling in the United States.

4
 5 Moreover, DHS performed no NEPA review of indirect or cumulative impacts, nor
 6 of connected and similar actions, in either the PEA or the FONSI.

7 **Environmental Impacts Resulting from These Programs**

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 9 79. Upon information and belief, approximately 35 million foreign nationals
 10 have entered the United States and settled, and millions of foreign nationals will
 11 continue to enter and settle, pursuant to these eight programs. In some cases,
 12 DHS's very failure to provide public transparency and analysis regarding the
 13 numbers of foreign nationals subject to and benefiting from these or other such
 14 programs has disadvantaged Plaintiffs in their quest to establish the true magnitude
 15 of environmental impacts resulting from them. DHS's compliance with NEPA
 16 would remedy this lack of transparency.

17
 18 80. These programs have a significant effect on the size and growth of the
 19 United States's population, as well as the particular distribution of that population
 20 growth. Population growth itself is a significant environmental impact, as
 21 particularly noted by Congress in NEPA, and also as set forth in Dr. Cafaro's
 22 report, "*The Environmental Impact of Immigration into the United States.*" See Ex.

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 25 5. As noted by Dr. Cafaro, population growth is a key factor in a wide variety of
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1 environmental impacts. For example, immigration-driven population growth leads
2 to urban sprawl and farmland loss, habitat and biodiversity loss, an increase in
3 worldwide levels of greenhouse gas emissions, and an increase of water demands
4 and water withdrawals from natural systems. *See* Ex. 5 at 196.

6 81. Surveying the “purposes and needs” sections of several recent federal and
7 state agency EISs, Dr. Cafaro explains how new, environmentally harmful projects
8 are continually created around the country to accommodate immigration-driven
9 population growth. *See* Ex. 5 at 211. These recent EISs cite anticipated or planned
10 population growth as creating the need for a myriad of environmentally harmful
11 new infrastructure, for example, transit projects, such as the creation of light rail
12 systems, new airports, and projects for road-widening and road construction;
13 energy projects, such as coal and natural gas development, new power plants, and
14 pipelines; and water supply projects, such as new dams and reservoirs. *See* Ex. 5 at
15 211-216. There are many other kinds of developments, such as new schools and
16 housing projects, that are only needed because of population growth. *See* Ex. 5 at
17 217-218.

23 82. Population growth is responsible for one of the leading environmental
24 problems across the United States: urban sprawl, that is, new development on the
25 fringes of existing urban and suburban areas. *See* Ex. 5 at 219. Sprawl increases
26 overall energy and water consumption and air and water pollution, and decreases
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1 open space and natural wildlife habitat, endangering the survival of many species.

2 *Id.* From 1982 to 2010, a period of massive immigration, 41.4 million acres of
3 previously undeveloped urban land was built on to accommodate the United
4 States's growing cities and towns—an area approximately equivalent to the State
5 of Florida. *Id.*

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8 83. The future loss of the undeveloped land remaining in the United States, due
9 to unrelenting population growth, will produce significant environmental
10 consequences. The ongoing loss of open spaces, habitats, and wilderness to
11 unrelenting population growth is a source of anguish to those who love the
12 wilderness, including many of the instant Plaintiffs. Former President Barack
13 Obama acknowledged this great environmental loss in his speech marking the
14 designation and preservation from development of the Papahānaumokuākea Marine
15 National Monument in Hawaii. President Obama stated, “I look forward to
16 knowing that 20 years from now, 40 years from now, 100 years from now, this is a
17 place where people can still come to and see what a place like this looks like when
18 it’s not overcrowded or destroyed by human populations.” White House Press
19 Release, Remarks by the President at the Designation of the Papahānaumokuākea
20 Marine National Monument (September 1, 2016), *available at*
21 [https://obamawhitehouse.archives.gov/the-press-office/2016/09/01/remarks-](https://obamawhitehouse.archives.gov/the-press-office/2016/09/01/remarks-president-designation-papahanaumokuakea-marine-national-monument)
22 [president-designation-papahanaumokuakea-marine-national-monument.](https://obamawhitehouse.archives.gov/the-press-office/2016/09/01/remarks-president-designation-papahanaumokuakea-marine-national-monument)
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1 84. Population growth also threatens to accelerate biodiversity loss and the
2 extinction of animal and plant species. *See* Ex. 5 at 236. The United Nations’
3 Secretariat of the Convention on Biological Diversity estimates that humanity may
4 be causing the extinction of one out of every three species on Earth in the next one
5 to two hundred years. *Id.* Conservation biologists agree that the most important
6 “direct drivers” of biodiversity loss are: habitat loss, the impacts of alien species,
7 over-exploitation, pollution, and global climate change. *Id.* at 236-237. All five are
8 caused by increased human population and the increased human activities
9 associated with human population growth. *Id.*

13 85. The carbon dioxide (“CO₂”) emissions produced in the United States also
14 are increasing because of immigration-driven population growth. Furthermore,
15 those foreign nationals that settle in the United States produce an estimated four
16 times more CO₂ in the United States than they would have in their countries of
17 origin. The estimated 637 tons of CO₂ produced annually by U.S. immigrants is
18 482 million tons more than they would have produced had they remained in their
19 home countries.⁸ The impact of immigration to the United States on global
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25 ⁸ Reducing CO₂ has often been a focal point of presidential environmental
26 initiatives even as the impacts of immigration on global carbon emissions were
27 never calculated. *See, e.g.*, Memorandum from Christina Goldfuss, Final Guidance
28 for Federal Departments and Agencies on Consideration of Greenhouse Gas
Emissions and the Effects of Climate Change in the National Environmental Policy
Act (Aug. 1, 2016), *available at*

1 emissions is equal to approximately 5 percent of the increase in annual world-wide
2 CO2 emissions since 1980. That is 5 percent of total *global* CO2 emissions, not 5
3 percent of U.S. emissions. These numbers do not even include the CO2 impacts of
4 children born to United States immigrants. *See* Ex. 5. at 261.

5
6 86. Because a greater population uses more water, population growth also results
7
8 in a higher aggregate water use, putting increased pressure on water systems,
9 including rivers and underground aquifers. Water taken for human consumption is
10 necessarily removed from an ecosystem, leading to a host of environmental
11 impacts. *Id.* at 270-280. “When too much water is taken from these ecosystems for
12 consumptive use by human beings, there may not be enough water left behind to
13 perform these critical ecosystem services and functions.” *Id.* at 273.

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16 87. The environmental impacts resulting from population-based demands for
17 water are most vividly illustrated in the state of California. *Id.* at 281-288. The
18 nation’s most populous state also tops the nation in terms of water withdrawal.
19 California has also been experiencing a severe, multi-year drought. Governor Jerry
20 Brown declared statewide mandatory water restrictions for the first time in
21 California’s history, ordering towns and cities to reduce their water use by 25
22 percent. *Id.* at 286. This drought has led the state to overdraft its underground
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27 https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/nepa_
28 [final_ghg_guidance.pdf](https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/nepa_final_ghg_guidance.pdf).

1 aquifers, with potentially devastating environmental consequences. *Id.* at 285-86.

2 Water quality is also an issue. Numerous human activities can cause water
3 pollution. For instance, the introduction of excess nitrogen and phosphorus
4 fertilizers into streams, rivers, and lakes encourage explosive growth of “algal
5 blooms,” ultimately leading to eutrophication and the destruction of these
6 ecosystems and the species that inhabit them. *Id.* at 274.
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9 88. DHS’s administration of the eight programs increases the United States’s
10 population and thereby causes significant environmental impacts, as detailed by Dr.
11 Cafaro. Yet DHS has never acknowledged these impacts despite its recognition that
12 NEPA applies to its programs and actions.
13
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15 89. DHS has also never acknowledged the significant environmental impacts in
16 the area of the Southwest border caused by illegal entry of mass numbers of
17 foreigners. Parole, TPS, asylum, and DACA are all programs which have the effect
18 of encouraging further illegal entry across the Southwest border. As expert Jessica
19 Vaughan describes in her report on the Southwest border: “[h]istorical experience
20 demonstrates that a real or even perceived change in enforcement policies, both at
21 the border and in the interior, can significantly affect the number of people
22 attempting to cross the border illegally.” Ex. 3 at 177. Indeed, a Border Patrol
23 intelligence report from 2014 based on interviews with migrants reveals that 95%
24 stated that their “main reason” for coming was because they had heard they would
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1 receive a “permiso,” or permission to stay. *Id.* at 178. The environmental effect of
2 this illegal entry is not limited to population growth; the illegal entry has also
3 caused environmental degradation along the Southwest border.
4

5 90. The massive numbers of people illegally crossing the southwest border have
6 left a host of environmental impacts in their wake, such as the destruction of native
7 and at-risks species and habitats from the trampling of the native vegetation;
8 garbage dumping on a massive scale; water pollution; and the setting of fires, many
9 of which turn out of control, for the purposes of heat, cooking, or to distract Border
10 Patrol agents. These and other environmental degradations are detailed in the
11 affidavits of Fred Davis, Peggy Davis, Caren Cowen, John Ladd, and Ralph Pope.
12 *See* Ex. 6, Ex. 7, Ex. 15, Ex. 16, and Ex. 18. The scale, location, and form of such
13 environmental impacts necessarily depend on a number of factors, including, but
14 not limited to, the number of individuals illegally crossing, where they choose to
15 cross, and, to some degree, what their goals are in crossing (for example, drug-
16 running versus finding work in the interior). Though DHS policies are not the sole
17 factor in all of these components of the illegal border-crossing phenomenon, there
18 is no doubt they are a factor.
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25 91. DHS’s lack of response to these environmental effects on the southwest
26 border is another example of how DHS simply ignores the impacts that foreign
27 nationals themselves have on the human environment when they enter the country.
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CAUSES OF ACTION

COUNT I

**The DHS Instruction Manual Violates the APA and NEPA by Failing to
Require NEPA Compliance with Respect to its Actions Relating to the Entry
Into and Settlement of Foreign Nationals in the United States.**

92. Plaintiffs reallege paragraphs 1-91 as if fully set forth herein.

93. CEQ regulations require each federal agency to adopt internal NEPA procedures to ensure NEPA compliance. 40 C.F.R. § 1507.3. Agency NEPA procedures shall comply with CEQ regulations. 40 C.F.R. § 1507.1 (2017).

94. CEQ regulation 40 C.F.R. § 1507.3(b)(2) requires DHS to set forth “specific criteria for and identification of those typical classes of action[]” which normally require (i) the preparation of an environmental impact statement, (ii) the finding that they are subject to categorical exclusion, or (iii) the preparation of an environmental assessment.

95. DHS promulgated its Instruction Manual on November 6, 2014. (Ex. 2)

96. The Instruction Manual qualifies as a “rule” under the APA because it is “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.” 5 U.S.C. § 551(4) (2012).

1 97. Rules qualify as federal actions under NEPA. 40 C.F.R. §1508.18(a)
 2 provides that federal actions include “new or revised agency rules, regulations,
 3 plans, policies, or procedures; and legislative proposals[.]”
 4

5 98. The regulation of the entry into and settlement of foreign nationals in the
 6 United States is a major component of DHS’s statutory mission, and such
 7 regulation comprises “principal programs” pursuant to 40 C.F.R. § 1505.1(b) and
 8 “typical classes of action” pursuant to 40 C.F.R. § 1507.3(b)(2).
 9

10 99. The entry into and settlement of foreign nationals in the United States has
 11 myriad impacts on the “human environment” subject to NEPA analysis, including,
 12 but not limited to, population growth and the attendant impacts such growth
 13 produces. 42 U.S.C. § 4332(2)(C) (2012); 40 C.F.R. §1508.14; *see also* 40 C.F.R.
 14 § 1508.8 (specifying that “growth inducing effects [and] . . . population density or
 15 growth rate” are impacts subject to NEPA analysis).
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19 100. The Instruction Manual omits any mention of that vast class of DHS
 20 programs/actions that concerns the entry into and settlement of foreign nationals in
 21 the United States.
 22

23 101. DHS’s failure to address these “typical classes of actions” and/or “principal
 24 programs” in its Instruction Manual violates the CEQ NEPA regulations 40 C.F.R.
 25 §§ 1500-1508.
 26
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102. The failure of DHS to incorporate NEPA compliance into its Instruction Manual for those actions relating to the entry into and settlement of foreign nationals in the United States violates the CEQ regulations, and accordingly is arbitrary, capricious, an abuse of discretion, and otherwise contrary to law, in violation of the APA.

COUNT II

DHS is Violating the APA and NEPA by Failing to Engage in Any NEPA Review with Respect to its Eight Programs Regulating the Entry Into and Settlement of Foreign Nationals in the United States.

103. Plaintiffs reallege ¶¶ 1-91 as if fully set forth herein.

104. CEQ regulation 40 C.F.R. § 1508.18(b)(3) provides that federal actions subject to NEPA include: “Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.”

105. DHS has eight programs covering, respectively: 1) employment based immigration; 2) family based immigration; 3) long-term nonimmigrant visas; 4) parole; 5) TPS; 6) refugees; 7) asylum; and 8) DACA. They are set forth in ¶ 55. Each of these eight programs comprises “a group of concerted actions to

1 implement a specific policy or plan” and “implement[s] a specific statutory
 2 program or executive directive” pursuant to 40 C.F.R. § 1508.18(b)(3), and thus
 3 qualifies as a federal action subject to NEPA.
 4

5 106. DHS never initiated NEPA compliance with respect to these eight programs.

6 107. DHS’s decision to proceed without initiating any NEPA compliance for
 7 these eight programs or any component of these eight programs violates NEPA
 8 and the CEQ regulations, and accordingly is arbitrary, capricious, an abuse of
 9 discretion, and otherwise contrary to law, in violation of the APA.
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12 **Count III**

13 **The Categorical Exclusion A3 Established by DHS on November 6,**

14 **2014, Violates the APA.**

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 17 108. Plaintiffs reallege ¶¶ 1-91 as if fully set forth herein.

18 109. CEQ regulation 40 C.F.R. § 1507.3(b)(2) provides that agency NEPA
 19 procedures shall provide “[s]pecific criteria for and identification of those typical
 20 classes of action” that qualify for application of a categorical exclusion.
 21

22 110. DHS promulgated Categorical Exclusion A3 as part of its NEPA
 23 compliance. Categorical Exclusion A3 provides:
 24

25 Promulgation of rules, issuance of rulings or interpretations, and the
 26 development and publication of policies, orders, directives, notices,
 27 procedures, manuals, advisory circulars, and other guidance
 28 documents of the following nature:

- (a) Those of a strictly administrative or procedural nature;
- (b) Those that implement, without substantive change, statutory or regulatory requirements;
- (c) Those that implement, without substantive change, procedures, manuals, and other guidance documents;
- (d) Those that interpret or amend an existing regulation without changing its environmental effect[.]

Ex. 2 at 65.

111. DHS fails to define “rules, or interpretations, . . . policies, orders, directives, notices, procedures, manuals . . . of a strictly administrative or procedural nature[.]” *Id.* These undefined terms are so broad that they potentially encompass much of the entire DHS mission. Many, if not most, DHS rules, policies, orders, manuals, and so on, are arguably “strictly administrative or procedural” in the broadest sense but do in fact, have an impact on the “human environment”; such actions include, at a minimum, those actions DHS chose to subject to Categorical Exclusion A3 that are now at issue in this Complaint. Impermissibly, Categorical Exclusion A3 gives absolute discretion to DHS to determine what constitutes “rules, or interpretations, . . . policies, orders, directives, notices, procedures, manuals . . . of a strictly administrative or procedural nature[.]”

112. Indeed, some DHS activities that may qualify as “rules, or interpretations, . . . policies, orders, directives, notices, procedures, manuals . . . of a strictly administrative or procedural nature . . .” do result in environmental

impacts because they regulate the entry into and settlement of foreign nationals in the United States. Such regulatory actions unquestionably cause population growth, and thus are subject to NEPA analysis. CEQ regulation 40 C.F.R. §1508.8(b) provides that population growth is an “effect” subject to NEPA analysis. It is thus arbitrary and capricious to exclude these types of regulatory actions categorically from NEPA analysis.

113. DHS Categorical Exclusion A3 is facially arbitrary, capricious, and overbroad under the APA because the criteria it lists for application are not “specific,” in violation of CEQ regulation 40 C.F.R. § 1507.3(b)(2). Categorical Exclusion A3 does not give fair warning of what is covered by the Categorical Exclusion and is thus fatally overbroad. Contrary to 40 C.F.R. § 1508.4, A3 it does not adequately identify the categories of actions to be covered by the Categorical Exclusion.

114. In sum, DHS’s promulgation of Categorical Exclusion A3 violates NEPA, and is arbitrary, capricious, an abuse of discretion, and otherwise contrary to law, in violation of the APA.

COUNT IV

The Categorical Exclusion A3 is Arbitrary and Capricious as Applied to Four Actions Regulating the Entry Into and Settlement of Foreign Nationals in the United States.

115. Plaintiffs reallege ¶¶ 1-91 as if fully set forth herein.

116. The use of Categorical Exclusion A3 is unlawful as applied to the federal actions set forth in ¶¶ 71-74, and contrary to NEPA and the APA:

I. Adjustments to Limitations on Designated School Official Assignments and Study by F-2 and M-2 Nonimmigrants, 80 Fed. Reg. 23680 (Apr. 29, 2015), amending 8 C.F.R. §§ 214.2 and 214.3, which regulates the Student and Exchange Visitor Program (at ¶ 71);

II. Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students, 81 Fed. Reg. 13039 (Mar. 11, 2016), amending 8 CFR Parts 214 and 274a, to implement a revision to the nonimmigrant visa program (at ¶ 72);

III. Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82398 (Jan. 17, 2017), a Final Rule amending “its regulations related to certain employment-based immigrant and nonimmigrant visa programs” (at ¶ 73);

IV. International Entrepreneur Rule, 82 Fed. Reg. 5238 (Jan. 17, 2017) to implement an addition to the parole program for “international entrepreneurs” to remain in the United States (at ¶ 74).

117. A categorical exclusion shall only be utilized for “a category of actions which do not individually or cumulatively have a significant effect on the human environment” 40 C.F.R. § 1508.4. “Significantly” is defined by 40 C.F.R. §

1 1508.27(4) to include effects which are “highly controversial.” The four actions
2 regulating the entry into and settlement of foreign nationals in the United States for
3 which Categorical Exclusion A(3) was utilized qualify as “significant” due to the
4 high number of public comments received by DHS. The controversy surrounding
5 these actions alone should have disqualified them from Categorical Exclusion.
6

7
8 118. Additionally, the four actions to which Categorical Exclusion A3 was
9 utilized regulate the entry into and settlement of foreign nationals in the United
10 States. These actions result in population growth. NEPA implements congressional
11 concern for “the profound influences of population growth” on “the natural
12 environment[.]” 42 U.S.C. § 4331(a). Implementing CEQ regulation 40 C.F.R.
13 §1508.8(b) expressly establishes that “growth inducing effects and other effects
14 related to induced changes in the pattern of land use, population density or growth
15 rate . . .” are “effects” subject to NEPA analysis. The application of Categorical
16 Exclusion A3 to these four actions regulating entry into and settlement of foreign
17 nationals in the United States is thus inconsistent with NEPA and its implementing
18 CEQ regulations and is accordingly arbitrary and capricious under the APA.
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23 115. Because each of these actions has individual and or cumulatively significant
24 effects, the use of the Categorical Exclusion A3 is contrary to 40 C.F.R. §§ 1501.4,
25 1508.4, and 1508.27. DHS’s application of the Categorical Exclusion A3 is thus
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1 arbitrary, capricious, an abuse of discretion, and otherwise contrary to law, in
2 violation of the APA.

3 119. Furthermore, DHS's lack of support in the administrative record for the
4 application of the Categorical Exclusion to these four actions also renders that
5 application arbitrary and capricious under the APA.
6

7 120. DHS's improper application of the Categorical Exclusion to these four
8 actions is contrary to NEPA and is accordingly arbitrary, capricious, an abuse of
9 discretion, and otherwise contrary to law, in violation of the APA.
10

11 COUNT V

12 Failure to Take a "Hard Look" at the Environmental Impacts of the June 2, 13 2014, Action "Response to the Influx of Unaccompanied Alien Children" in 14 Violation of NEPA and the APA 15

16 121. Plaintiffs reallege paragraphs 1-91 as if fully set forth herein.
17

18 122. NEPA requires federal agencies to take a "hard look" at the environmental
19 impacts of their proposed actions, and to prepare an EIS if the adverse
20 environmental impacts of a proposed federal action are potentially significant. 42
21 U.S.C. § 4332(c).
22

23 123. In preparing the EA for the June 2, 2014, "Response to the Influx of
24 Unaccompanied Alien Children [,]" DHS failed adequately to consider the direct,
25 indirect, and cumulative impacts of the action upon the human environment, in
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violation of 40 C.F.R. § 1508.9. These impacts include, but are not limited to, those population and border impacts described in Plaintiffs' affidavits (Ex. 6-18), as well as described in the expert reports written by Steven Camarota, Ph.D. (Ex. 4), Phil Cafaro, Ph.D. (Ex. 5), and Jessica Vaughan (Ex. 2).

124. DHS's reliance upon an inadequate and incomplete EA, without full compliance with NEPA, constitutes a violation of Section 102(2)(C) of NEPA, 42 U.S.C. § 4332(2)(c), as well as the implementing CEQ regulations set forth at 40 C.F.R. § 1500 *et seq.*, and is unreasonable, arbitrary, an abuse of discretion, and not in accordance with law under the APA.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs respectfully request that this Court grant the following relief:

- 1) Enter a declaratory judgment that the failure of DHS to incorporate NEPA compliance into its Instruction Manual regarding those of its actions relating to the entry into and settlement of foreign nationals in the United States violates NEPA and the APA; and
- 2) Enter a declaratory judgment that DHS has violated NEPA and the APA with respect to the eight programs set forth in ¶ XX for failing to initiate NEPA compliance; and

1 3) Enter a declaratory judgment that the DHS's Categorical Exclusion A3 is
2 arbitrary and capricious on its face under the APA; and

3 4) Enter a declaratory judgment that the DHS's application of Categorical
4 Exclusion A3 is arbitrary and capricious under the APA as applied to 80 FR 23680,
5 81 FR 13039, 81 FR 82398, and 82 FR 5238; and
6

7 5) Enter a declaratory judgment that the EA and the FONSI issued for the June
8 2, 2014, Action "Response to the Influx of Unaccompanied Alien Children"
9 violates NEPA and the APA; and
10

11 6) Enter an order requiring DHS to comply fully with NEPA with respect to
12 those eight programs set forth set forth in this complaint; and
13

14 7) Enter an order requiring DHS to pause the eight active programs regulating
15 the entry into and settlement of foreign nationals in the United States pending
16 NEPA compliance; and
17

18 8) Set aside DHS's application of Categorical Exclusion A3 to: Adjustments to
19 Limitations on Designated School Official Assignments and Study by F-2 and M-2
20 Nonimmigrants, 80 Fed. Reg. 23680 (Apr. 29, 2015); Improving and Expanding
21 Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and
22 Cap-Gap Relief for All Eligible F-1 Students, 81 Fed. Reg. 13039; Retention of
23 EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting
24 High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82398; and International
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1 Entrepreneur Rule, 82 Fed. Reg. 5238, and remand to DHS for proper compliance
2 with NEPA; and

3 9) Set aside the EA and FONSI issued by DHS for the June 2, 2014, Action
4 “Response to the Influx of Unaccompanied Alien Children” and remand to DHS
5 for compliance with NEPA; and
6

7 10) Award Plaintiff reasonable attorney fees, costs and expenses incurred in
8 pursuing this action to the extent permitted by law; and
9

10 11) Provide such other relief as this Court deems just and proper.
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12
13

14 Dated: December 8, 2017

15 Respectfully submitted,
16

17 s/ Julie B. Axelrod

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